Protecting the users of legal services:

Prioritising payments Compensation Fund

Consultation responses

July 2020

Name	Respondent Type
Publish the response with my/our name	
Responses from organisations	
Association of Personal Injury Lawyers (APIL)	Representative industry group
Birmingham Law Society	Law society
Kent Law Society	Law society
Legal Ombudsman	Representative group
Legal Services Consumer Panel	Representative group
Leicestershire Law Society	Law society
Liverpool Law Society	Law society
Newcastle Upon Tyne Law Society	Law society
Northamptonshire Law Society	Law society
Professional Negligence Lawyers Association	Representative group
The Law Society	Law society
Westminster and Holborn Law Society	Law society
Responses from individuals	
Colin Rimmer	
Publish the response anonymously	
Responses from individuals	
ID25	Non-legally qualified, working in legal services
Publish my/our name but not the response	
Responses from Organisations	
Devon and Somerset Law Society	Law society

Solicitors Regulation Authority
199 Wharfside St
Birmingham
B1 1RN

17 April 2020

By email only: protectreforms2020@sra.org.uk

Dear Sirs

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

APIL welcomes the opportunity to respond to the SRA's consultation on the Compensation Fund. The Compensation Fund provides an essential fall back fund when client protection measures fail, and sets solicitors apart as providers of legal services, when compared to claims management companies and others, with the fund providing an extra level of protection for clients who choose a solicitor. We are concerned that the changes to the compensation fund being proposed will leave clients unable to claim the compensation they have lost as a result of their solicitor behaving dishonestly, failing to have the proper professional indemnity insurance in place, or where there was valid insurance in place, but the policy has been voided. There is already a discretion which is exercised when decisions are made as to whether an application to the fund is successful, and we do not believe there need to be wholesale changes to the fund. We are strongly against the reduction in the maximum payment to £500,000.

We have responded only to those questions within our remit.

Q2) Do you agree with our revised proposals to remove the hardship tests for all individuals, small businesses, small charities and small trusts?

Q3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the costs will be immaterial or substantively compensated elsewhere?

We agree that the hardship tests will be removed. It is unfair that those who suffer loss as a result of a solicitor failing to account must prove hardship, whereas those who have suffered as a result of dishonesty do not. Regardless of income, most people will be significantly impacted from any level of financial loss – as the consultation document states, two thirds of typical working families in "middle Britain" have less than three months outgoings saved, and only a third are confident that they could handle a financial crisis. We agree that the fairer approach is to use the residual discretion in the fund to allow for those rare cases in which the impact of the loss is disproportionately low to be refused under the fund.

Q4) Do you agree that the fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

While we would agree that commercial organisations should not have access to the fund, care must be taken around any rule which limits the fund to those who are clients or recipients of the services of the solicitor/firm in question. In relation to personal injury claims, it is important that the wording of any restriction around this would not prevent those who are unable to act for themselves because they do not have the capacity to do so, from accessing the fund. Ultimately, the fund should primarily protect the consumer.

Q5) Should we expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the fund, if no other redress is available?

We do not think that there should be a blanket rule, but this should be a factor in the decision making process as to whether an award should be made. There should be no double recovery. There should be a right for the Fund to be joined in any related action where appropriate.

Q10) Do you agree with the revised approach to how we will apply the single applications limit?

We strongly disagree with the proposal to reduce the limit on a single claim from £2 million to £500,000. The current limit of £2 million is correct. In order to provide effective protection, the limit must be set at a level below which most claims will realistically fall, and there must also be a power to waive this limit in exceptional circumstances, so that a client does not lose crucial monies.

The suggested cut in the limit for the compensation fund from £2 million to £500,000 will mean that many severely injured clients will be left without adequate compensation. Due to the increased costs of care and housing, it is not rare for damages in serious personal injury cases to be well over £500,000. In cases where personal injury victims receive high value damages, much of the money is intended to provide for future care and essential living costs. Damages are carefully calculated to provide personal injury claimants with just enough funds to meet their reasonable needs. If an unscrupulous solicitor takes some of these damages, or does not have adequate professional indemnity insurance in place to provide cover if professional negligence has occurred, the severely injured claimant will not be able to meet the cost of their future care and living costs. It is vital that the Compensation Fund remains able to rectify this where possible.

The Compensation Fund is already a discretionary fund, and payments are made on the merits of the particular case. There is already a requirement that each application to the fund is considered on its merits, and as part of this, there is consideration about whether the loss can be made good by some other means, or whether the activities, omissions or behaviour of the applicant contributed to the loss. This ensures that the fund is only accessed where necessary. It is vital that the fund remains viable as a fall back option should a client suffer losses as a result of solicitors failing to account for damages, behaving dishonestly, or not being properly insured.

We hope that our comments prove useful to you.

Yours faithfully

Alice Taylor

Legal Policy Officer

BIRMINGHAM LAW SOCIETY

one profession • one region • one voice

Response to SRA Consultation

Protecting users of legal services – prioritising payments from the SRA Compensation Fund

March 2020

BIRMINGHAM LAW SOCIETY RESPONSE
TO SRA COMPENSATION FUND CONSULTATION

1. Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

It depends what is meant by “people” in question 1. If “people” means lay clients who are unrepresented then it might be helpful to adopt less formal/legal language. If “people” means the profession then the proposed purpose statement is satisfactory.

Also, one could argue that understanding when a claim is likely to be paid (or more importantly not paid) after the applicant has already lost money and comes to make a claim on the Fund, is a bit late in the day.

2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

We agree

3. Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

It is not clear from the consultation paper – paragraphs 83 to 85 – as to how this discretion would be exercised so we are unable to agree or disagree. Future guidance is promised at paragraph 85. However, the present proposal appears vague and unsupported by any data. For example, we are not clear what is meant by “rare” as “on rare occasions” and how this links into the abandonment of the hardship test.

4. Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

We are not convinced. The current position is that any person who entrusts funds to a solicitor can claim from the Fund if those monies are misappropriated. Removal of this category of potential applicants raises an important point for the reputation of the profession. We have traditionally been known as the profession which can be *"trusted to the ends of the earth"*[1]*.* The Fund has played a key role in the public perception of our profession. If you deal with a solicitor in whatever capacity, your money will be safe. If this restriction is imposed then you will only be covered by the Fund if you are a client.

There are three examples at paragraph 89 of those applicants who would no longer be able to claim as follows: -.

1. A buyer who has lost money because of the dishonesty of the seller's solicitor in a conveyancing transaction would be excluded.
2. Third parties in personal injury claims such as vehicle hire companies where the solicitor has not paid their costs out of the client's damages received because they have been lost or stolen.
3. An opposing party in divorce proceedings in a legal proceedings such as spouses in a divorce matter where the other solicitor is holding and then steals the money set aside for a financial settlement.

Whilst managing cost is a sensible objective, the Fund has always been a key consumer protection, head and shoulders above other schemes. Lessening eligibility could reduce trust and confidence in the profession. We have always been able to say with absolute confidence to a member of the public that if you deal with a solicitor then your money is safe and secure. If anything goes wrong, the Compensation Fund will step into the breach as a safety net. That will no longer be the case if all of the proposals are adopted. One can just imagine the damaging headlines – *"Mrs Smith loses life savings because of dishonest solicitor & profession refuses to compensate".*

[1] *Bolton v Law Society [1993] EWCA Civ 32*

We have always had a Roll-Royce scheme compared to other professions so this would be a fundamental change and needs careful consideration before adoption.

In a similar vein, we cannot see any data as to the frequency of non-client claims and the amount paid out in such cases. If there are only a few cases per annum then it would be prudent to retain the ability of non-clients to claim but only where no other remedy is available

5. Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

In principle yes – but the SRA should think about the practicalities. The client in question would have no interest in assisting the non-client and would not be able to seek legal advice unless he funded the costs himself as the SRA will not allow claims for legal costs to be made from the Fund.

6. Do you agree with the proposal to introduce a multiple application cap?

Yes

7. Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

We agree – in order to protect the Fund.

8. Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

No – the SRA should exercise its own discretion in the specific circumstances to ensure that equity prevails.

9. Do you have any other comments on the features of the proposal to cap multiple claims?

The capping of multiple claims arising from the same circumstance must be managed by the Fund in such a way as to ensure that it is not a lifetime cap.

10. Do you agree with the revised approach to how we will apply the single application limit?

Yes

11. Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

Yes - see paragraph 72 of the Consultation paper - paragraph 4.1 of the Draft Rules seems not to take on board the proposal regarding charities and trusts.

Also, we refer to the argument that the SRA Fund is much more generous than other schemes. Some of the regulators used by way of comparison are very new on the scene (the Institute of Chartered Accountants probate scheme) and have very few members so these comparisons are not terribly convincing.

We cannot identify any other EDI impacts.

20 March 2020
Linden Thomas
President
Birmingham Law Society

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

Response ID:35 Data

2. About you

1.
First name(s)

Jon

2.
Last name

Pitt

3.
Please enter your SRA ID (if applicable)

122120

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Kent Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

1) Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Strongly disagree

10. Please explain your answer and any further suggestions on how to help people understand when a claim is likely to be made.

Members of the general public will have difficulty in interpreting this statement. It is directed at consumers, be they individuals, small businesses or charities, but is not couched in appropriate language. Non-professional readers will not be able to use it

to understand the circumstances when a claim is likely to be paid.
To take just one example of sentence which will hard for members of the general public to follow:
"Those applying for a payment from the Fund will need to demonstrate that they have taken appropriate steps to exhaust all other avenues of redress and have acted in a way that has not contributed to their loss".
The statement would be greatly improved by it being redrafted in plain English. By contrast, the Law Society website achieves this - https://www.lawsociety.org.uk/supportservices/advice/articles/sra-compensation-fund/

11.
2) Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes

12.
3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

Yes

13.
4) Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No

14.
Please explain why not

It is important to the reputation of the profession that all those affected by losses caused by a solicitor's poor service should be able to get redress, whether or not they are a client or direct recipient of a service. For example, small business owners or beneficiaries may lose out as a result of this restriction. However, there is a need for a discretion to be available, and it will not always be appropriate for a non-client to be compensated on the same level as a client or direct recipient of the service. Comparisons with the Legal Ombudsman scheme are not appropriate, as the scheme serves a different purpose.

15.
5) Do you think we should expressly include a right for the client of the solicitor whose actions have caused the loss for which they are liable, if no other redress is available?

Yes

16.
Please explain your answer

Yes. Additionally, it should be remembered that even if other redress is available in theory, it may be impractical to pursue, perhaps due to cost. There should be a discretion to compensate in all cases where loss has been caused by poor service by a solicitor.

17.
6) Do you agree with the proposal to introduce a multiple application cap?

No

18.
Please explain why not

The introduction of a fixed and formal multiple-application cap is arbitrary and damages the principle that the client should not

suffer due to the default of the solicitor – this in turn damages the reputation of the profession. Instead, there should be a discretion to apply a cap in appropriate circumstances.

19.
7) Do you agree that we set a financial threshold of £5m?

No

20.
Please explain why not

No, for the same reason given to Question 6. . There should not be a financial threshold. If however, a financial threshold is set, there should be a power to exceed it in exceptional circumstances, maybe by an adjudication body in complex cases

21.
8) Do you have a preference for any method of apportionment, or that we retain the option to apply any of these depending on the circumstances?

No, we would prefer that the hands of the adjudicator are not fettered, and there should be discretion to apportion by any means appropriate to the circumstances.

22.
9) Do you have any other comments on the features of the proposal to cap multiple claims?

We are generally opposed to arbitrary caps, limits and restrictions, and believe the Fund should be able to respond effectively in all cases, including those where significant loss has been suffered. We would prefer that discretion is used to reject claims if appropriate, rather than the blunt instrument of fixed caps and limits.

23.
10) Do you agree with the revised approach to how we will apply the single applications limit?

No

24. Please explain why not

No. As stated above, we do not support the application of a single application limit.

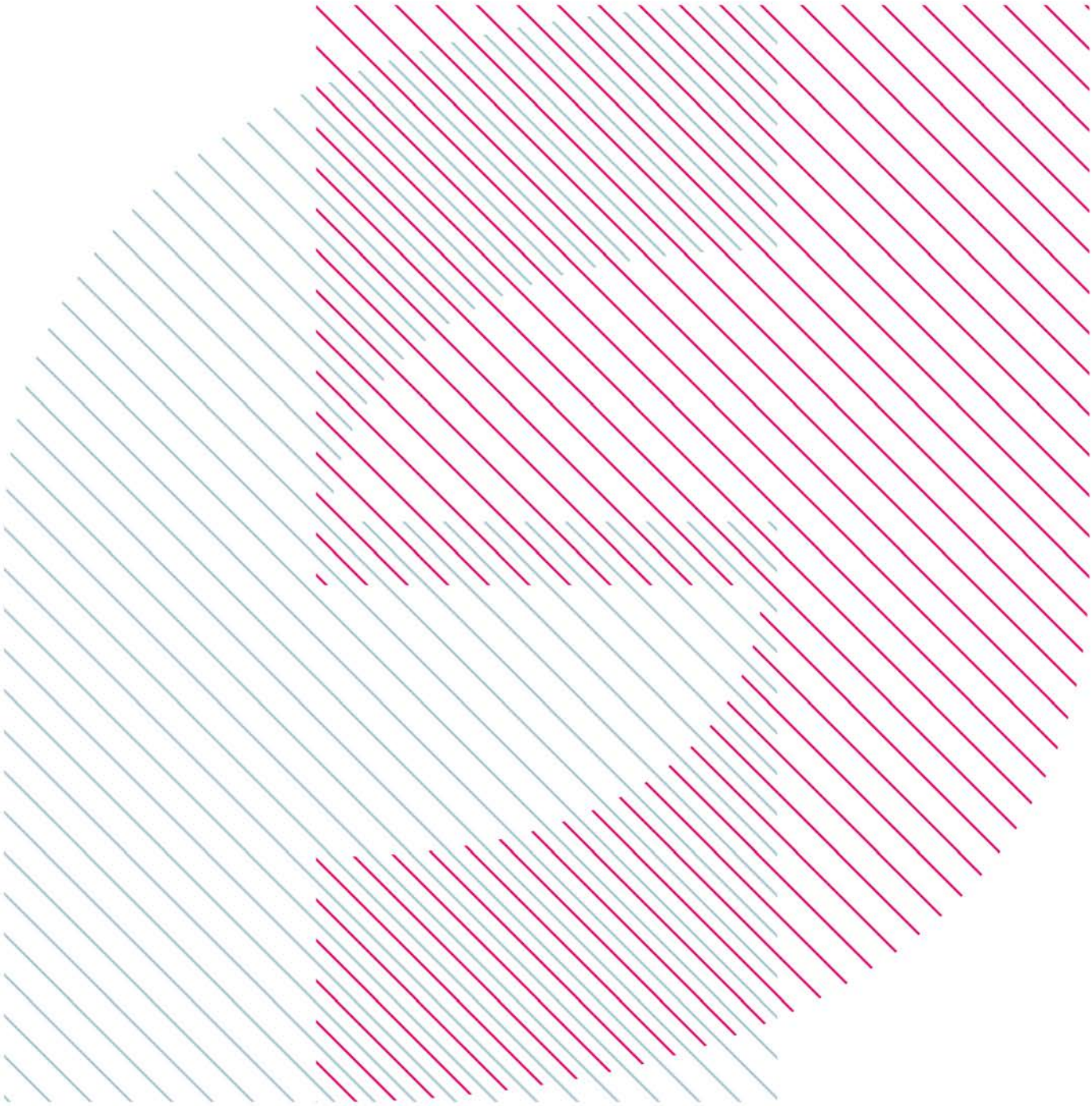
25.
11) Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

We support the comments of other respondents who have pointed out the particular situations where vulnerable consumers may be impacted, and whose claims may be substantial - such as P I Claimants, victims of Mis-Selling, and generally victims who have mental or physical disabilities.

Consultation Response

Solicitors Regulation Authority

Protecting users of legal services – prioritising payments from the SRA Compensation Fund



Legal Ombudsman April 2020

Response on behalf of the Legal Ombudsman

Introduction

1. The Legal Ombudsman (LeO) was established by the Legal Services Act (2007). We protect and promote the public interest by resolving complaints and providing redress when things go wrong with the provision of legal services. We then take the learning and insight we gain from complaints and feed these lessons back to the profession, regulators, and policy makers to encourage the sector to develop and improve.

2. We welcome the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on its revised proposals for prioritising payments from the SRA Compensation Fund.

3. The Legal Ombudsman exists to ensure that there are reasonable options for redress for members of the public who use legal services. As the Compensation Fund is an alternative source of redress in situations where circumstances prevent us from enforcing our remedies, it is important to us that the Fund remains appropriate and accessible for all who need it.

4. We are pleased to see the changes made to proposals by the SRA in response to feedback on its prior consultation from our organisation and others. We look forward to hearing the final shape of the new rules and will consider how they might impact on the information we provide to those who contact us.

Consultation questions

Q1. Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

5. Yes, the purpose statement explains access to the Fund well, although we would urge the use of plain English wherever possible to ensure that members of the public of all backgrounds are able to understand it easily. As an example, we would recommend taking out the word 'notwithstanding' to make the wording clearer.

Q2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

6. We support the SRA's decision to abandon its proposals to limit payments to 'wealthy households' and to designate this as a hardship fund. We agree with the thresholds laid out in this consultation regarding the kind of organisation that should have access to the Compensation Fund, which mirrors our own scheme, and with the conclusion that most people will be significantly impacted from any level of financial loss caused

by a solicitor. In our experience, situations where money has been lost can be very distressing even where the level of loss is objectively low.

7. Overall, the proposal to remove hardship tests seems appropriate and we support any changes that will make the operation of the fund more consistent.

Q3. Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

8. Yes, this is an appropriate use of discretion. Our own rules make reference to similar situations, giving us the power to dismiss a complaint where we can see that an issue has already been dealt with substantively by an alternative scheme. We also can and do issue decisions where we have found poor service but no detriment, and as such we do not recommend a remedy in these cases. We consider that the SRA's proposal in this instance mirrors this common-sense approach, and is important in maintaining the Compensation Fund for those who really need it.

Q4. Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

9. As a matter of principle, we do not agree with this proposal. It is indicated in the consultation paper that historically such payments have been made in cases where losses are high. While it is positive that there are relatively few of these instances, it seems counterintuitive to discount instances where detriment is particularly significant. If ultimately the Fund exists, as the SRA has already set out, to 'uphold trust in the integrity of the profession', excluding such cases appears to work against this aim.

10. Although we appreciate that this change has been proposed with our jurisdiction in mind, we would urge caution against mirroring our rules in this instance. This is an area in which we are conscious of gaps in the existing system of redress, and we would not want to see these compounded.

11. Moreover, it is not compelling to say that solicitors should not be expected to adhere to professional ethical standards for the benefit of all involved in a transaction. It is in the interests of all legal service providers that members of the public can have a high degree of trust in the integrity of the profession as a whole. Denying redress for those significantly impacted by a failure to meet those professional standards would be likely to damage this considerably.

12. While we acknowledge that the SRA has suggested an alternative route to redress (by claiming against the other party to a transaction/proceedings, who can then make a claim themselves against their solicitor or the Fund), this adds an extra layer of complication. In the interests of expediency, if it is possible to achieve the same outcome with fewer steps in the process, we would generally suggest that that would be a better course to pursue.

Q5. Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

13. If the SRA does end up following through on this proposal, then yes, we agree that the rights of the client should be proactively stated. However, our preference would be for the SRA to keep access to the Fund as it is currently, and allow third parties to continue claiming where necessary.

Q6. Do you agree with the proposal to introduce a multiple application cap?

14. While we are aware that this will still mean that there will be bigger gaps in redress going forward in cases where losses are high, we also acknowledge the SRA's central aim of ensuring the future viability of the Compensation Fund. With this is mind, we support this proposal on the basis that this will help to ensure that this important source of redress can be maintained. Provided that the SRA is able to identify potential claimants and encourage them to make applications where there are likely to be many of them, we believe this approach would be fair.

Q7. Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

15. Our organisation does not hold any data to help us assess the appropriateness of this threshold. In the abstract, however, this seems reasonable.

Q8. Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

16. Individual cases are likely to have differing particulars that make one or other method more appropriate. At the Legal Ombudsman, we believe that assessing redress on a case-by-case basis is a sound way to ensure fairness. We therefore agree that the SRA should retain the option to apply any of the suggested methods according to the circumstances.

Q9. Do you have any other comments on the features of the proposal to cap multiple claims?

17. We are interested to understand why the SRA has chosen not to recognise the difference in losses that may be sustained by individuals in these cases. While we acknowledge that in relation to investment schemes, all parties will have made a risk-based decision, this does not really apply to situations such as litigation funding. Would the SRA consider awarding payments as a proportion of losses, rather than paying the same amount to all applicants? If not, it would be useful to understand why this has been rejected as a method of apportionment.

Q10. Do you agree with the revised approach to how we will apply the single application limit?

18. We agree that this is a fairer way to approach applications than applying the limit to a single retainer. As above, we agree with the revised approach insofar as we accept that the sustainability of the Fund is of crucial importance for the future.

Q11. Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

19. We do not have any further comments to make, and consider that negative EDI impacts have largely been addressed by these revisions to the original proposals.

Conclusion

20. Thank you for the opportunity to comment on the SRA's proposals for administering its Compensation Fund scheme in the future.

21. Our joint Better Information research indicates that there needs to be clearer explanations about which firms are regulated and what protections they offer, including access to the Compensation Fund.

22. Therefore our concern going forward is that any changes are appropriately communicated to the public – and users of legal services in particular – and that everyone has access to clear instruction about how to apply to the Compensation Fund. It is also crucial that they have a good understanding of varying regulatory protections and how this relates to access to the Fund as well.

23. We would be pleased to work on this with the SRA and (if relevant) the LSB, to ensure that consumer protection is maintained to a high standard and all users of legal services can navigate systems of redress with relative ease.

For any questions about our response please contact our External Affairs Team at support@legalombudsman.org.uk

Sent by email to consultation@sra.org.uk

21 April 2020

Dear Sir/Madam,

The Legal Services Consumer Panel (the Panel) welcomes the opportunity to respond to the Solicitors Regulation Authority's (SRA) consultation on its proposals to change its Compensation Fund arrangements.

The Panel has considered the proposals carefully, balancing the SRA's need to ensure that the Compensation Fund remains sustainable, with the obligation to provide a safety net for risks which the Professional Indemnity Insurance (PII) is unable to cover. We accept that there is a need to review, adjust and certainly consider the changing nature of risks in the sector. However, after careful reflection, the Panel is of the view that consumers are being asked to take on a disproportionate level of risk, more than the professionals whom consumers are asked to entrust with their money.

Once more the Panel finds itself agreeing with the reasons for re-assessing the Compensation Fund arrangements, including the central objective. But just as we did in 2018[1], we find the means to achieving the objectives wanting. We have outlined some broad concerns below and answered all the consultation questions, also below.

Lack of consumer research and inadequate evidence

It is concerning that yet again the SRA has developed a second rendition of these proposals without consumer research. These proposals would have benefitted from the voices of those who have successfully claimed from the Compensation Fund and from those who have been unsuccessful. The impact on victims must be monitored, measured and understood before the availability of the fund to victims is limited to minimize the cost to the contributions. At the very least, changes to the Compensation Fund should have been informed by consumer research into risk appetite, particularly with regards to lowering the maximum single pay-out from £2m to £500,000.

The lack of consumer research is further compounded by insufficient detail around some of the evidence that the SRA does provide. For example, supporting evidence shows that the SRA closed more than 50 per cent of claims without making a payment. This is a significant number, which raises questions around the reasons for declining these claims. However, the SRA does not provide any analysis around declined claims, yet this insight goes to the heart of evaluating how the fund is operating and serving victims' needs. This analysis would have also informed our thinking around how future amendments are likely to impact consumers.

[1] SRA – Consultation response on PII and Compensation Fund proposals, June 2018.

Perverse driver for change

It is equally worrying that the drive for change stems from the need to mitigate against high cost claims from fraudulent and reckless investment schemes. This is a poor basis for reducing consumer protection. The SRA needs to tackle investment scams or misconduct with its supervisory and enforcement activities, not by cutting off compensation for wrongdoing. Tackling activities that are against the Code of Conduct or patently dishonest is a core function of regulation. It is an abdication of this responsibility to attempt to reduce compensation payment to consumers who have suffered financial loss as a result of misconduct or dishonesty. And it would be a double injustice to be penalised by the very regulator who failed to prevent the wrongdoing. We acknowledge that the SRA cannot predict or guard against every misdemeanour. But to propose to curtail compensation because of that is beyond what we can support, particularly when the SRA has not, in any detail, shown how it plans to tackle these investment schemes.

Danger in eroding public and consumer confidence

The SRA has been at pains to stress that although the Compensation Fund provides an essential safety net for consumers, this is at a cost to the profession and ultimately to consumers. We agree. However, there is an undertone or insinuation that this cost is unreasonable or undesirable and we must challenge this supposition. The Compensation Fund arrangement is beneficial to both consumers and solicitors. While the benefit to consumers is often highlighted, the added confidence that this safety net affords the profession can't be underestimated. It can never be taken for granted that consumers are being asked to entrust solicitors with money running into hundreds of thousands, sometimes millions of pounds e.g. where solicitors offer conveyancing and probate services. The protection for these large sums must be robust. This is the cost of doing regulated business and the added assurance that consumers pay for. And if the cost of contributing to the Compensation Fund is driven up by solicitors partaking in reckless activities, the SRA needs to focus on tackling these activities. Adjustments to how the Compensation Fund operates cannot be to the detriment of those consumers who have been wronged.

Consumers procure legal services for serious matters, often in times of distress. The procurement of these services from solicitors commands high costs from professionals who trade on the brand recognition of being solicitors, and justify their charges based on their training, competence, skills and the protection that is afforded. To erode consumer protection will have a negative impact on trust and confidence in the profession and even the sector. The fund is already limited in that it is discretionary, and it does not purport to put consumers back in the position they would have been if the mischief had not occurred.

Insufficient protection for consumers of conveyancing and probate services

The Panel cannot support the proposal to cap single payouts to £500,000 – a significant reduction from £2 million. This cap is inadequate in some areas of law like conveyancing or probate, and the consultation acknowledges that conveyancing is an area of high claim. A limit set at that level would completely fail to address the potential needs of a significant number of consumers.

Reducing the cost in other areas

The Panel notes with huge interest the cost of interventions, typically where the SRA steps in to close a firm down. The SRA's data shows that intervention cost is a significant drain on the Compensation Fund. The data provided shows that between

2012 and 2016 the Compensation Fund's outgoings on interventions rose from 2.2 to 27.7 per cent. In contrast, expenditure on grants fell from 80.5 to 54.8 per cent. This highlights that in fact what is draining the Compensation Fund is the cost of interventions, not necessarily direct grants.

It is important to note that the SRA only began taking money from the Compensation Fund to pay for interventions in 2013. The Panel strongly believes that the decision to fund interventions from the Compensation Fund is questionable. The Compensation Fund exists to compensate wrongdoing, and in our opinion, it should not be used to fund core regulatory business such as winding down a firm. Again, we go back to our earlier point that this set of proposals could amount to a penalty on consumers for provider and regulatory failure: in this instance, failure by the regulator to ensure that its supervisory and enforcement activities are robust enough to ensure the need for fewer interventions.

Where interventions must occur, their cost should not be borne by the Compensation Fund. We do not know the breakdown of the costs of interventions, because this information is not made available by the SRA. It is our assumption that the bulk of the intervention costs are paid to other professionals contracted to fulfil the practicalities of closing the mismanaged firm. What is certain from the data available, is that if the cost of interventions is removed or reduced, a substantial drain on the Compensation Fund would be reduced.

Response to the consultation questions.

Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

The Panel agrees with the rationale for explaining more clearly the purpose of the Compensation Fund. However, we do not agree with the scope of the current definition in so far as it excludes third-party clients. It is our strong contention that third-party clients should not be excluded from being able to access the compensation fund. We elaborate on this in our response to question 4.

Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes. The Panel agrees with the proposal to remove the hardship tests for the reasons articulated in the consultation paper.

Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

The Panel is against this proposal. Consumers who are successful in making a claim do so because it has been established that the solicitor in question is culpable for their financial loss. Imposing an arbitrary lower limit is against the very essence of compensating for loss.

There is already an upper limit cap on what consumers can claim and we regret that the SRA is proposing to reduce this further. In our view, to further limit payments based on a subjective determination of monetary significance is problematic. We note the SRA's own evidence which shows that most households have less savings with which they could withstand a financial crisis, suggesting that any loss in many households would not be considered inconsequential. More importantly, some of those seeking redress from the Compensation Fund may have been in a financial crisis, or their legal

matter may have depleted their finances substantially. Therefore, what the SRA considers to be immaterial may be substantial in the circumstances.

Finally, the Panel is not clear of the need for this proposal because the SRA already has a discretion to decline compensation if there are other routes to redress. The SRA has also emphasized, consistently, that the Compensation Fund is only available where the consumer has exhausted all other routes. We cannot see any merit in adding what appears to be a sanction for monetary sums that the SRA considers too low, given how difficult that is to objectively quantify.

Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

No. The Panel is strongly against this proposal. At present, the SRA can and does consider allegations of misconduct made by third-party complainants which can lead to disciplinary proceedings being brought against a solicitor. It is therefore odd that the SRA is proposing to end compensation to these third-party complainants where there is proof of financial loss. This policy is grossly unfair, inconsistent, and is contrary to the SRA's regulatory objective of 'promoting and maintaining adherence to professional principles.' Professional principles which clearly extend beyond the contractual obligation to direct clients. Again, this proposal has the potential to erode public and consumer confidence in the profession.

Cutting off all third-party compensation can lead to unjust outcomes. Sometimes consumers are not treated as the lawyer's client even though the legal work is intended to benefit them. For example, in a re-mortgage, the lender is technically the client, not the homeowner. This blanket ban on all third-party claims will not only lead to consumers losing out unfairly, it will also reduce the incentive to act fairly towards third parties and will dissuade consumers from reporting misconduct, which may curtail intelligence on risks.

It is even more concerning that the SRA has sought to use the position of the Legal Ombudsman to justify this reversal of scope. The Legal Ombudsman has been much criticised for its own approach, which is too narrow and out of step with most modern ombudsman services. In fact, ombudsman schemes in lots of other sectors already consider third party complaints. Moreover, the Legal Ombudsman does accept some third-party cases, it is just confusing to understand which it accepts, and in what circumstances, a point the Panel has asked the Legal Ombudsman to clarify often.

Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

While in theory this may seem sensible, this proposal is fraught with practical difficulties and disproportionate hurdles. As we understand it, the third-party who has suffered a loss must first pursue the client of the solicitor for the loss, even when it is not the client's dishonesty that has led to the loss. In turn, the client of the solicitor can seek compensation from the fund to compensate their own loss. This is a convoluted and long-winded approach which would add unnecessary cost, delay and stress to consumers.

Do you agree with the proposal to introduce a multiple application cap?

No. As noted above we are of the view that the multiple application cap is being introduced to address fraudulent and reckless investment schemes. Such schemes need to be tackled with stricter supervision and effective enforcement measures. The

SRA's proposals would penalise those who might have a legitimate claim against the fund. We cannot support this proposal because the risk to consumers is that, where very large losses arise, there is a possibility that individual claims may not be met.

Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

The Panel believes this is a finely balanced issue.. We note that in conveyancing, aggregate claims can quickly exceed £5 million. We are also concerned about systematic and fraudulent or negligent activity in a firm. However, we accept that a cap on multiple claims may be necessary in some circumstances. However, we do not agree with this arbitrary figure. Again, we note that there is nothing to aid our decision making here. The SRA has not provided data or analysis of aggregate historical claims. We don't know how many cases would have been captured by this sum, or how many would have fallen outside of it. In fact, we do not know why the SRA considers £5m to be an appropriate figure. It may sound reasonable, but we cannot be sure that it is, and it is reasonable to insist that any regulatory change of this nature should only be introduced on the basis of relevant evidence.

Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

If these proposals go ahead, we believe the SRA should retain the option to apply any method of apportionment depending on the circumstances of the case.

Do you have any other comments on the features of the proposal to cap multiple claims?

No

Do you agree with the revised approach to how we will apply the single application limit?

No. We do not agree with a cap on single claims which would represent a reduction from £2m to £500,000. We accept that the SRA intends to exercise a discretion to award greater sums in certain circumstances, however, on balance, we cannot support placing such a risk on consumers. Moreover, there is little transparency around how the Compensation Fund currently operates, which further bolsters our opposition to a cap mitigated only by the SRA's discretion.

We accept the SRA's data and evidence which shows that the average grant from the Compensation Fund is £20,000 and 75 per cent of grants are under £5,000. The SRA has argued that the impact of the reduction would be small because few claimants seek above £500,000 in compensation. Conversely, this suggests that it is the smaller but larger volume claims that have an impact on the Compensation Fund. Moreover, while the number of claimants seeking above £500,000 may be small, the impact of the cap on those claimants is likely to be significant.

The fact remains that those seeking compensation are those who have been defrauded by their solicitor. It is disappointing that the SRA's insight into what other regulators do focused heavily on other legal services regulators, yet the Council for Licensed Conveyancers which also regulates a high claim area of law (conveyancing) does not have an artificial cap in place. We believe that the SRA should seek to emulate best practice for consumers from outside of the legal services sector. For example, the Financial Conduct Authority recently announced that the Financial Ombudsman

Scheme will **increase** its maximum payout, and this will be automatically adjusted every year to ensure compensation keeps pace with inflation.

Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly equality diversity and inclusion impacts that you think we have not identified?

The Panel is concerned about the proposal to withdraw funding from claimants who seek professional support in making an application. We can foresee this blanket policy negatively affecting vulnerable consumers. In our view, this proposal is directly opposed to the regulator's duty to protect the interest of consumers and improve access to justice. Some consumers will need independent and paid for support, especially at a time when free advice services and support is dwindling and overstretched.

The SRA is also proposing to cut off compensation where a solicitor's PII provider is insolvent, in cessation, or the practitioner's policy qualifying insurance has been disclaimed. At the time of drafting and publication, there is no doubt that the SRA thought these circumstances would be rare. The situation created by Covid-19 however may make this less rare. It is concerning that a regulator with a duty to protect consumers' interests considers it appropriate to create a situation where there is no insurance and no compensation in place.

Conclusion

Overall, we are of the view that these sets of proposals are poorly designed. We believe that the main mischief the SRA seeks to guard against should be controlled with improved monitoring and enforcement actions – better regulation. Consumers are being asked to relinquish significant protection without any benefits. We are not convinced that a reduction in the cost of legal services as a result of these changes would be passed on to consumers. We are not even convinced it will materialise.

I hope you find these comments helpful. Please contact Lola Bello, Consumer Panel Manager, if you have any enquiries

Yours sincerely,

Sarah Chambers

Chair

Legal Services Consumer Panel

Protecting the users of legal services: Prioritising payments from the Compensation Fund

Response by Leicestershire Law Society

RESPONSE

Question 1
Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?
NO – the statement is not at all clear and needs to be simpler if aimed at the general public.

Question 2
Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?
YES

Question 3
Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?
YES

Question 4
Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?
NO.
Unpaid suppliers such as Barristers and Expert witnesses should also be able to claim. In the absence of such security for fees QCs for example and top medical specialists may become reluctant to accept instructions from the small firms now established locally. This would be to the detriment of both the client and the provision of fair competitive legal services.
In addition the opposing party should be able to claim in certain circumstances, for example if a solicitor has stolen money held on behalf of both parties following the sale of a house on a Divorce/Civil Partnership Dissolution both the solicitor's client and the other party should be compensated.

Question 5
Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?
YES.

Question 6
Do you agree with the proposal to introduce a multiple application cap?

NO.
A cap either by firm or by connected event could leave many clients without compensation.
We note that it is intended to cover, '*investment schemes*, …[and] *could potentially also include, tax avoidance schemes, litigation funding schemes as well as other events giving rise to multiple client losses*.'

It is not clear who will decide or when, or on what basis, that a claim would be caught by a cap.

It is therefore unlikely that clients will be aware of this potential limit to any compensation at the time they give instructions. In any event, they cannot know the number of potential applicants with whom they would have to share the 'pot.'

Once they become aware, they will be uncertain as to the amount of compensation available to them as it would appear to depend on the number of people making a claim. This could lead to a perceived race to settle, or force clients to undersettle to avoid there being nothing left in the pot.

It is likely that there will be greatest disadvantage to the most vulnerable clients with least resources, who may be slower to access the fund, or understand how best to present their claim. We note that it is the intention to remove access to assistance with legal fees which again will have greatest impact on those with less skill or means to access assistance.

Question 7
Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

NO.
The figure of £5 million is arbitrary and whether or not it is adequate will depend on the particular circumstances of the connected event.

Question 8
Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

NO.

We do not favour any of the proposals as all have disadvantages highlighted below:

1. ***The money is divided equally amongst all applications brought within an advertised time limit.***

This could only be determined when the date for applications had closed. It would mean considerable delay and uncertainty for the applicants. It does not guarantee fairness and proportionality between applicants as it cannot allow for individual circumstances.

2. ***An amount per claim is calculated based on the features of the event.***

Again, this would introduce unfairness, uncertainty, and delay. Who would decide and on what basis would not be known to the applicants. There would inevitably be winners and losers.

3. ***By setting an amount for each claim recovered per scheme based on what another regulator may pay in the same circumstances.***

Whilst this may be fairly transparent in terms of financial investments, it is not clear how this could be applied in other circumstances.

Question 9
Do you have any other comments on the features of the proposal to cap multiple claims?
NO.

Question 10
Do you agree with the revised approach to how we will apply the single application limit?

YES. We prefer the single claim limit to apply to each individual applicant receiving payment rather than linking a single claim to a single retainer. We agree this will give a fairer outcome.

Question 11

Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

YES. Our geographical legal sector area Leicestershire and Rutland is heavily populated with the smaller, modern entities (niche, sole practitioner, small High St LLP) many owned by ethnic minority solicitors and looking after vulnerable individuals such as asylum seekers, the elderly and victims of medical accidents.

Numerous local firms have closed over the past few years and we believe that momentum will continue if the proposed changes are implemented reducing protection for users of such of legal services.

Innocent proprietors of small firms could be adversely affected by the proposal to cap/reduce payouts as such firms/their members are less likely to have additional resources. These firms tend to have higher numbers of female/BAME staff and there therefore is an EDI impact.

Leicestershire Law Society
April 2020

About Leicestershire Law Society

Leicestershire law Society was founded in 1860 as an organisation for local solicitors. Its current objects include representing the interests of its members locally and nationally. More information can be found at www.leicestershirelawsociety.org.uk.

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

Response ID:32 Data

2. About you

1.
First name(s)

Mickaela

2.
Last name

Fox

3.
Please enter your SRA ID (if applicable)

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Liverpool Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

1) Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Somewhat agree

10. Please explain your answer and any further suggestions on how to help people understand when a claim is likely to be made.

The LLS considers that the reference in the proposed purpose statement to losses caused by fundamental ethical failures - such as dishonesty or lack of integrity could be a hostage to fortune . The Court of Appeal has made clear that lack of integrity is not synonymous with dishonesty and would include, for example, wilful or reckless disregard for standards, legal

requirements and obligations. It is accepted that the purpose statement goes on to set out the circumstances in which payments from the fund will be made but we consider the inclusion of 'lack of integrity' in the purpose statement could be misleading.

11.

2) Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes

12.

3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

Yes

13.

4) Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No

14.

Please explain why not

If the loss is a direct consequence of the solicitor's conduct the Fund that the claimant is not the client or recipient of the solicitor's service should not be a bar to eligibility.

15.

5) Do you think we should expressly include a right for the client of the solicitor whose actions have caused the loss for which they are liable, if no other redress is available?

No

16.

Please explain your answer

We are unclear about the question and the example provided in the consultation

17.

6) Do you agree with the proposal to introduce a multiple application cap?

Yes

18.

7) Do you agree that we set a financial threshold of £5m?

No

19.

Please explain why not

The committee members were undecided about the level of the cap. It was noted that the rationale for the cap was largely premised on the volume of anticipated and actual claims on the Fund arising out of development schemes. It was also recognised that there was a need to impose a limit of the sums paid out in respect of such claims. The consensus view was that the cap should not be less than £5M and that £10M would cover most claims.

20.

8) Do you have a preference for any method of apportionment, or that we retain the option to apply any of these depending on the circumstances?

Given the multifarious claim the Fund is likely to be asked to meet we considered that there was a need for flexibility in the approach to apportionment.

21.

9) Do you have any other comments on the features of the proposal to cap multiple claims?

No

22.

10) Do you agree with the revised approach to how we will apply the single applications limit?

Yes

23.

11) Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

No

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

Response ID:29 Data

2. About you

1.
First name(s)

Chris

2.
Last name

Hugill

3.
Please enter your SRA ID (if applicable)

112354

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Law society

8.
Please enter the name of the society

Newcastle Upon Tyne Law Society

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

1) Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Somewhat agree

10. Please explain your answer and any further suggestions on how to help people understand when a claim is likely to be made.

The statement sets expectations by emphasising that it is a discretionary fund of last resort for consumers who are individuals and small businesses and charities. The language in which the statement is framed should however be much clearer from the

perspective of consumers to whom it is addressed. To take just one example of sentence which will hard for members of the general public to follow:
"Those applying for a payment from the Fund will need to demonstrate that they have taken appropriate steps to exhaust all other avenues of redress and have acted in a way that has not contributed to their loss".
The statement would be greatly improved by it being redrafted in plain English.

11.
2) Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes

12.
3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

No

13.
Please explain why not

It is agreed that it is both sensible and equitable to use a discretion where the loss will be substantively compensated elsewhere. Access to the fund should be as a last resort as set out in the proposed purpose statement. There does not appear however to be any compelling argument to refuse compensation where the loss is considered immaterial. In such cases the payment may be insubstantial having regard to the resources of the client but still has a purpose in helping retain public confidence.

14.
4) Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No

15.
Please explain why not

A blanket removal of third parties from access to the Fund may damage the reputation of the profession and drawing examples from, for example, the Legal Ombudsman scheme does not provide a good analogy as it serves a different purpose in improving standards of service to consumers and providing modest redress where service drops below a reasonable standard. We would favour a discretion to reduce payments to persons who are not clients thereby retaining an ability to act equitably in the circumstances.

16.
5) Do you think we should expressly include a right for the client of the solicitor whose actions have caused the loss for which they are liable, if no other redress is available?

Yes

17.
Please explain your answer

Yes on a discretionary basis. There will be cases where alternative avenues of seeking redress are theoretical only due, for example, to the cost of trying to utilise them

18.

6) Do you agree with the proposal to introduce a multiple application cap?

No

19.
Please explain why not

Although the answer above is no we want to give a qualified yes as explained below.

We have concern in relation to all of the proposals to impose caps and limits as their application and level seems arbitrary. The Fund has always been a competitive advantage of the profession underpinning the belief that the client is what matters and should not suffer due to the recklessness bad behaviour or financial collapse of a legal firm.
Nevertheless it is reluctantly accepted that where a solicitor has been so foolish or reckless to expose a firm to such multiple claims it will be impractical to provide an open ended guarantee that compensation will be paid bearing in mind that this has to be funded by the profession especially in the economic difficulties which currently exist.

It is believed however that this should be exercised as a discretion allowing those administering the Fund to make such decisions as equitably as possible in the different circumstances of each case. We do not favour an absolute rule on multiple claims.

20.
7) Do you agree that we set a financial threshold of £5m?

Yes

21.
8) Do you have a preference for any method of apportionment, or that we retain the option to apply any of these depending on the circumstances?

We can see force in the suggestion that the Fund retains all 3 options or even adds another option so that the amount is divided in proportion to the actual losses suffered so that each person applying receives a pence in the pound outcome similar to an insolvency situation – we can though that the administrative burden of that may be difficult (and expensive) to manage

---

22.
9) Do you have any other comments on the features of the proposal to cap multiple claims?

No our comments have been made above

23.
10) Do you agree with the revised approach to how we will apply the single applications limit?

Yes

24.
11) Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

There will be consumers in vulnerable groups who will be affected by these proposals e.g. PI claimants or misselling to those whose mental faculties are impaired.

There is also a view that small firms could be adversely affected by the proposal to cap/reduce payouts as small firms/their members are less likely to have additional resources. Smaller firms tend to have higher numbers of female/BAME staff and therefore there may be an EDI impact

---

Northamptonshire Law Society

SRA CONSULTATION

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

This response is submitted on behalf of the Council of Northamptonshire Law Society.[i]

We are disappointed to note that despite there being little support (and indeed strong opposition from the profession and consumer groups), the Solicitors Regulation Authority (SRA) intends to go ahead with its proposal to reduce the maximum payment for a grant by the Compensation Fund from £2 million to £500,000.

The Council is concerned by any proposals that will reduce the level of consumer protection available and any consequential impact on the reputation of the profession.

Reducing the availability of compensation to members of the public who have suffered loss, as a result of the action or inaction of a solicitor, would not only be grossly unfair to the person affected but also reduce the public's trust in solicitors and impact adversely on the ability of solicitors to attract clients in a market where there are an increasing number of competitors - many of whom are not regulated.

Any loss of public confidence in the ability of the compensation fund to offer compensation would have greatest impact on sole practitioners and two partner firms. The compensation fund is most likely to be used by the clients of smaller firms. This is because partners in larger firms, not involved in the dishonesty, would have the benefit of insurance to settle such claims, not because there is a greater level of dishonesty in smaller firms. Any loss of confidence in the Compensation Fund could lead to clients becoming wary of instructing any one to two partner firm. There is a greater proportion of BAME solicitors practising in one to two partner firms and thus changes to the compensation fund could impact disproportionately on BAME solicitors.

QUESTIONS IN FULL

Question 1 Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid? **NO – the statement is too technical and needs to be expressed in simple language which can be readily understood by the majority of the public.** **Phrases such as 'thereby uphold' and 'alleviating financial loss' and 'fundamental ethical failures' will not be familiar to many people.**
Question 2 Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts? **YES**

Northamptonshire Law Society

Question 3
Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

YES

Question 4
Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

NO.
We note that the decision has been taken to prevent barristers and experts from claiming on the fund. This decision may have the unintended consequence of limiting the ability of sole practitioners and small firms to instruct the expert or barrister of their choice and to compete with larger firms. Experts and barristers may well take a decision not to accept instructions from small firms or only to do so in circumstances where payment is received in full before the work is undertaken.

we are particularly concerned by the following examples :
1. Buyers who have lost money because of the dishonesty of their seller's solicitor in a conveyancing transaction.
2. The opposing party in a legal proceeding such as spouses in a divorce matter where the other solicitor is holding and then steals the money set aside for a financial settlement.

This is extremely unfair to the individuals who have lost money through no fault of their own, to a risk that they could not insure against and over which they have no control -although they may have been prudent in the selection of their own solicitor, they cannot influence the selection of the other party's solicitor or regulated entity.
It would seem their only recourse would be to try to establish negligence against their own solicitor for some action or inaction in failing to anticipate or prevent the loss and satellite litigation will undoubtedly result.

Question 5
Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

YES

Question 6
Do you agree with the proposal to introduce a multiple application cap?

NO.
A cap either by firm or by connected event could leave many clients without compensation.
We note that it is intended to cover, '*investment schemes*, …[and] *could potentially also include, tax avoidance schemes, litigation funding schemes as well as other events giving rise to multiple client losses*.'

It is not clear who will decide or when, or on what basis, that a claim would be caught by a cap.

Northamptonshire Law Society

It is therefore unlikely that clients will be aware of this potential limit to any compensation at the time they give instructions. In any event, they cannot know of the number of potential applicants they would have to share the 'pot' with.

Once they become aware, they will be uncertain as to the amount of compensation available to them as it would appear to depend on the number of people making a claim. This could lead to a perceived race to settle, or force clients to under settle to avoid there being nothing left in the pot.

It is likely that there will be greatest disadvantage to the most vulnerable clients with least resources, who may be slower to access the fund, or understand how best to present their claim. We note that it is the intention to remove access to assistance with legal fees which again will have greatest impact on those with less skill or the means to access assistance.

Question 7
Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

NO.
The figure of £5 million is arbitrary and whether or not it is adequate will depend on the particular circumstances of the connected event.

Question 8
Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

We do not favour any of the proposals as all have disadvantages highlighted below:

1. ***The money is divided equally amongst all applications brought within an advertised time limit.***

This could only be determined when the date for applications had closed. It would mean considerable delay and uncertainty for the applicants. It does not guarantee fairness and proportionality between applicants as it cannot allow for individual circumstances.

2. ***An amount per claim is calculated based on the features of the event.***

Again, this would introduce unfairness, uncertainty, and delay. Who would decide and on what basis would not be known to the applicants. There would inevitably be winners and losers.

3. ***By setting an amount for each claim recovered per scheme based on what another regulator may pay in the same circumstances.***

Whilst this may be fairly transparent in terms of financial investments, it is not clear how this could be applied in other circumstances.

Northamptonshire Law Society

Question 9
Do you have any other comments on the features of the proposal to cap multiple claims?

NO

Question 10
Do you agree with the revised approach to how we will apply the single application limit?

YES.
We agree that the single claim limit should apply to each individual applicant receiving payment rather than linking a single claim to a single retainer. We agree this will give a fairer outcome.

Question 11
Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

YES.
The level of uncertainty and likely delay, in some of these proposals, combined with the changes already confirmed, is likely to have greater impact on vulnerable applicants, the elderly, those for whom English is not their first language, those with a lower level of education and other disadvantaged groups.

[i] Note:
Northamptonshire Law Society was established on 8th June 1879. It has 2 corporate members (one of which is the largest firm in Northamptonshire) and has 179 individual members and 39 associate members (which includes trainees). It has close links with the University of Northampton which is one of its patrons and engages with those seeking to enter the profession. The majority of its members are in private practice.
As at January 2018, there were 352 solicitors in Northamptonshire. 75% of solicitors were white/european, 14% BAME and 11% were of unknown ethnicity. Women made up 54% of solicitors in the county.
Of the 55 firms in Northamptonshire, only one firm had 26-80 partners, 2 firms had 11-25 partners, 7 firms had 5 -10 partners, 19 firms 2-4 partners and the remaining 26 firms were sole practitioners.

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

Response ID:34 Data

2. About you

1.
First name(s)

Katherine

2.
Last name

Manley

3.
Please enter your SRA ID (if applicable)

143742

6.
I am responding..

on behalf of an organisation

7.
On behalf of what type of organisation?

Representative group

8.
Please enter the name of the group

Professional Negligence Lawyers Association

9.
How should we publish your response?

Please select an option below.

Publish the response with my/our name

3. Consultation questions

1) Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Somewhat disagree

10. Please explain your answer and any further suggestions on how to help people understand when a claim is likely to be made.

We regard this part of the proposed statement as misleading to consumers with claims:
'they have a claim which should have been covered by the firm's

mandatory indemnity insurance, but where the firm has failed to
take out a policy of insurance as required to under our rules.'
There have been many solicitors insurers who have become insolvent including, Quinn, Lemma, Balva, Enterprise and more. Claimants therefore will not be eligible for payment if mandatory insurance was obtained but the insurer fails to pay. Our view is that the Fund should make a payment and take on the responsibility to recoup such payments from the insolvent insurer and/or the FSCS. Failing to do so leaves claimants out of pocket potentially for many years whilst coverage and insolvency procedures are followed. This undermines the very purpose of the Fund to preserve public confidence.

11.

2) Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes

12.

3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

No

13.

Please explain why not

If there is scope for loss to be compensated elsewhere then the Fund is best placed to pursue a subrogated claim for a a claimant or group of claimants. Further adminstrators of the Fund do not have the expertise to assess recoverability 'elsewhere' if this may involve claims against third parties which require knowledge and experience of areas of specialist law. The Fund is better placed than claimants to select and fund such advice and progress such claims.

14.

4) Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No

15.

Please explain why not

There are situations where funds belonging to people who are not clients or recipients of the services of the solicitor/firm in question who deserve to be protected by the Fund. Beneficiaries of trusts for example should have recourse to the Fund if their money or property is misappropriated. A recent case is another illustration where a guarantor's money was lost Goyal v Florence Care Ltd & Ors [2020] EWHC 659 (Ch) (19 March 2020) https://www.bailii.org/ew/cases/EWHC/Ch/2020/659.html In a situation where solicitors act as trustees or potentially in other situations the assessment should have regard to the claimant who has lost the money without this issue being an automatic reason for the Fund to fail to provide compensation.

16.

5) Do you think we should expressly include a right for the client of the solicitor whose actions have caused the loss for which they are liable, if no other redress is available?

Yes

17.

Please explain your answer

The Fund should be available to those who are unable to recover their losses for which the regulated provider is responsible. The Fund is best placed to pursue subrogated claims to recoup from third parties and an assessment of the ability or not for redress should be carried out by the Fund working with specialist solicitors with the required expertise.

18.

6) Do you agree with the proposal to introduce a multiple application cap?

No

19.

Please explain why not

The Fund would be in a difficult position to choose between genuine claimants as to whether they should recover or not because of any such cap. If all the claimants are assessed to be entitled to full compensation then to set such a cap by definition therefore potentially excludes genuine claimants from recovering compensation which the Fund considers they are entitled to. Such exclusion cannot be administered fairly or easily by those within the Fund. Choosing between the claimants as to which should or should not receive such payments is not a proper function for those administering the Fund.

20.

7) Do you agree that we set a financial threshold of £5m?

No

21.

Please explain why not

Setting a cap does not seem a proper way to fulfil the stated function of the Fund and would therefore deprive potentially those found to be entitled to compensation simply by imposition of a cap. If a regulated provider has behaved in such a way as to engage compensation payments, it is not acceptable to restrict the compensation in this way. There is potentially scope to consider third party claims in such situations which could be pursued by way of subrogation. This would be a better and more proper way for the Fund to seek to limit its exposure.

22.

8) Do you have a preference for any method of apportionment, or that we retain the option to apply any of these depending on the circumstances?

The administrators of the Fund should not be expected to apportion compensation. Should any such exercise be required then lawyers with expertise in this area should be engaged to set out how it should be done (if indeed it is legally possible). Such apportionment should reflect the same or similar SRA rules and legal framework as the the regulated providers themselves are subject to.

23.

9) Do you have any other comments on the features of the proposal to cap multiple claims?

Referring to paragraph 102. in particular, the Fund should be required to work closely with lawyers with appropriate expertise to assess the correct way forward. One factor should be whether the Fund is better placed to make compensation payments to those with claims and then itself pursue the claims 'through other means'. Further payments should not be restricted to those who receive services which are the usual business of the solicitor.

24.

10) Do you agree with the revised approach to how we will apply the single applications limit?

Yes

25.

11) Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

The Fund should have regard to the pursuit of third parties as a way to mitigate the compensation payments paid. As the only

association of lawyers specialising in Professional Negligence and Liability the PNLA is well placed to support the Fund. Our network includes a wide range of other types of professional, including those specialising in coverage disputes which are a key issue giving rise to compensation. Solicitors who are often intervened and without the means to fund an arbitration cannot challenge insurers who raise such disputes, nevertheless the merits of declinatures by insurers are often questionable. If the Fund subrogated such claims then insurers may be required to pay in place of the Fund. Co-operation therefore in a full review of opportunities for the Fund to make such recoveries would be sensible. This could be globally by way of a strategy or on a case by case basis. Further a co-ordination of shared investigations and experience in large scale/multiple failures would be beneficial for the Fund. The PNLA includes member practices with specialist group litigation departments who may well also be engaged in the same situations. Transparency between the SRA, the Fund and expert solicitors like the PNLA members could achieve far greater confidence all round to tackle the underlying problems more effectively moving forward.

Protecting users of legal services – prioritising payments from the SRA Compensation Fund: Consultation

Law Society Response

April 2020

The Law Society response to: Protecting users of legal services - prioritising payments from the SRA Compensation Fund: Consultation

Introduction

1. The Law Society of England and Wales welcomes the opportunity to comment on the SRA's proposals for changes to the rules governing payments from the SRA Compensation Fund (CF).

2. The proposals have been reviewed against the regulatory objectives and we are broadly supportive of the intentions, however we have outlined a number of areas where costs could be reduced before you restrict access to the CF or further limit the size of individual grants. Administrative costs, for instance, seem very high in relation to grant payments.

3. While the overall objectives are supported, we have some concerns about the specific means by which they will be delivered. The comments below are focused on promoting the public interest, by ensuring that the consumers of legal services are protected; equality, diversity and social inclusion are advanced; the reputation of the solicitors' profession is secure; and access to justice is enhanced. In summary:

    i. We agree that a purpose statement for the CF could be useful, but have concerns with parts of the statement that has been proposed.
    ii. We agree with the revised proposal not to make the CF a hardship fund, but remain concerned about the blanket exclusion of 'large' businesses.
    iii. We support the use of discretion to refuse or reduce payments, where losses are immaterial or adequately compensated elsewhere.
    iv. We disagree with the proposal to restrict applications to clients or recipients of a defaulting solicitor's services.
    v. It could help potential applicants if it were made explicit that clients have a right to claim on the fund for losses caused by their defaulting solicitor if no other redress is available.
    vi. We agree that in some instances it may be necessary to impose a cap on multiple applications connected to the same event or transaction.
    vii. We accept that £5 million may be an appropriate threshold for that cap, although it is not necessary to set a pre-determined limit if the principle of a cap is established within the rules.
    viii. We support a flexible approach to apportioning grants where a multiple application cap has been imposed, exercising discretion to ensure an equitable outcome.
    ix. We have no further comments on the proposal to cap multiple claims.
    x. We disagree with the revised approach to implementing the single application cap.
    xi. We are concerned about the impact of some of the proposed reforms, and think they risk inadvertently undermining equality, diversity, and inclusion.

4. We are especially happy to see that the proposal to make the CF a hardship fund has been abandoned. However, while we remain opposed to the idea of applicants having to prove hardship in order to claim from the fund, we have come to accept the

idea that a hardship test might be appropriate in considering claims from classes of applicants that might otherwise be excluded under the new rules. For instance, if there is to be a presumption against applications from large businesses, evidence that barring the application of a specific large business would cause hardship should be sufficient to defeat the presumption against considering their claim.

5. There are some issues which could have been covered in the consultation or given greater focus; and some of them ought to have been considered more fully before looking to restrict access to the CF and limiting the scope and maximum payments for claims. These issues are outlined below.

Evidencing the case for change

6. It is important to ensure that any proposals on regulatory reform are always supported by detailed reasons as to why change is required. Unfortunately, sufficient detail has not been provided in order for either reliable conclusions to be drawn about the likely consequences of some of the more substantial reforms, or to understand the motivation for introducing them.

7. The data which is used to support the need for reform is not always set out in a way which is conclusive and compelling. As such, it is not immediately clear what is driving the reforms and what they are trying to address. For instance, the data provided suggests that around half of the applications received are rejected but it is not clear why this is the case. For example, what percentage of grants that have been paid under the current regime would have been rejected if these new rules had been in place? And could it be said that the CF was fit for purpose if, for instance two-thirds or three-quarters of claims are likely to be rejected?

8. If more data was provided about the circumstances in which grants were paid from the CF, then we would be better able to determine whether the proposed reforms could be effective in reducing claims.

9. When explaining the need for changes to the CF, the threat posed by investment or property schemes has been highlighted. However, if these problems exist, it is likely this is partly due to failure to properly inform or regulate the profession in respect of those schemes. It would be helpful to better understand the evidence that these threats exist and what information will enable solicitors to tighten their risk management practices (to avert errors) and for the regulator to better target monitoring and enforcement responsibilities (to prevent fraud).

10. For example, if a solicitor is allowing their client account to be used to collect funds, then that is an improper use of a client account, because they are providing a banking facility. Similarly, if a solicitor is seemingly acting both for the promoter of an investment scheme and for the investors within it, there is an inherent conflict of interest.

11. If this research were to be carried out, and the data disclosed, then the regulator could be better placed to avoid making payments from the CF because the causes of claims could be prevented. This is a better outcome for everyone than excluding claimants or coming up with justifications for the curtailment of compensation payments. Unfortunately, this cannot be accomplished if the root causes of claims cannot be identified.

12. It would also help if more information about the profile of firms or practitioners which give rise to claims on the CF was provided. Having that data may provide the

opportunity to suggest alternative ways of avoiding claims, and it may also be of interest to qualifying insurers (and larger firms).

Intervention costs

13. One of the concerns we raised in our response to your previous consultation, in 2018, was that you were using the CF to pay for the costs involved in closing down firms in which you were forced to intervene. This concern has not been addressed in your current consultation, so we repeat our previous response in relation to this issue in full:[1]

> Seeking to reduce intervention costs
>
> The SRA has the power to intervene in firms. This power is set out in Schedule 1 to the Solicitors Act 1974. The power is to take control of the practice's bank accounts (office and client account) and take possession of the client files. The SRA usually appoints a firm of solicitors as the 'intervention agent' to implement their decision to intervene. In most instances, the SRA effects a 'full intervention', which in practical terms means the firm will close. This incurs agency costs that are charged to the Compensation Fund.
>
> Intervention costs represent one of the most significant drains on the resources of the Fund, and yet they are unaddressed by the SRA's proposed reforms. While steps ought to be taken to reduce the burden that fraud and dishonesty place on the Fund – and we would welcome the opportunity to work with the SRA to achieve this outcome – the SRA can exert more direct control over its expenditure on interventions.
>
> The SRA holds a great deal of information that may assist in finding improvements to the intervention process, but any methodology for calculating the charge of its costs to the Fund has not been set out publicly, and appears to have varied over the last ten years. A clear statement of what the methodology was, and is, with an accompanying statement of the amounts claimed, would be a welcome step towards transparency.
>
> We have looked back over the last 5 years of the Compensation Fund's available financial statements and extracted the relevant data about interventions and other legal costs, as well as the amounts paid out in grants of compensation, and set these out in table 4.
>
> In 2012 the SRA was not routinely paying for interventions out of the Fund, but since 2013 it has done so, and the proportion of the Fund's outgoings spent on interventions has grown dramatically in the years since. Indeed, from 2012 to 2016 the proportion of the Compensation Fund's outgoings spent on interventions rose from 2.2 to 27.7 per cent, a more than ten-fold increase. While in the same period the proportion of the Fund's outgoings spent on grants of compensation fell by almost a third, suggesting that this is actually a declining cost for the Fund, and runaway intervention costs pose the more immediate threat.

[1] https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/tls-response-sra-pii-consultation-2018/

Table 4. Compensation Fund expenditure, 2012-2016

Year	Total expenditure (million £)	Expenditure on grants (million £)	Expenditure on interventions and other legal costs (million £)	Grants as a percentage of total expenditure (%)	Interventions and other legal costs as a percentage of total expenditure (%)
2016	18.8	10.3	5.2	54.8	27.7
2015	28.4	17.9	6.6	63.0	23.2
2014	34.4	23.8	6.4	69.2	18.6
2013	20.0	13.8	3.0	69.0	15.0
2012	23.1	18.6	0.5	80.5	2.2

Even if the cost of interventions were reined in, it is arguably inappropriate for the SRA to be paying for them out of the Compensation Fund. Solicitors are levied to fund compensation, and the money raised for the Fund should be reserved for that purpose. Interventions should be regarded as part of the ordinary business of the regulator and paid for out of the SRA's general funds, where they would also be open to a greater level of scrutiny.

If the SRA were more diligent in monitoring the activities of its regulated entities, then less money would be spent on interventions, and if the cost of interventions were removed from the Compensation Fund, that would remove the fastest growing drain on its resources.

14. This issue illustrates the challenge with the lack of data to enable sufficient assessment of the proposals. If the purpose of the current consultation is as the title suggests – 'prioritising payments from the SRA Compensation Fund' – then it must address the substantial payments made to cover the costs of interventions.

Recoveries

15. One of the ways to improve the finances of the CF is through recoveries. We are sure that you are aware of this and that you are taking the steps you deem to be appropriate in order to recoup money lost in grants. However, looking at the most recent available financial statement, grant recoveries are only around two-thirds of grants paid:[2]

Income and expenditure account for the year ended 31 October 2018

	NOTE	2018 £'000	2017 £'000
INCOME			
Contributions received in the current year	7	22,609	11,263
		22,609	**11,263**
Grant recoveries	3	12,796	9,536
Investment income received	4	180	117
Residual balances received from Statutory Trust accounts	8	570	733
TOTAL INCOME		**36,155**	**21,649**
EXPENDITURE			
Grants paid	2	(18,085)	(15,179)
Administration costs	6	(10,571)	(11,664)
Auditors' remuneration – audit fees		(29)	(54)
Income tax	5	-	(6)
TOTAL EXPENDITURE		**(28,685)**	**(26,903)**

[2] https://www.sra.org.uk/globalassets/documents/sra/news/compensation-fund-2018.pdf

16. According to the report, 'Grants are recovered primarily from Statutory Trust Accounts held by the Society.' One potential option could be to recover more of the cost of grants from the defaulting solicitors who occasioned them. Obviously, this will not always be appropriate, or even possible, but in many instances those immediately responsible for the losses will have assets that could be pursued to replenish the CF's reserves.

17. In the interest of transparency, more information about recoveries should be made available to the profession.

18. This is another area where attention could be focused before considering restricting eligibility to the CF, or the size of awards.

Administration costs

19. It is clear from the CF's annual report (reproduced above) that the proportion of expenditure on administration costs is high. These were equivalent to 58 per cent of the grants paid in 2018 and a hefty 77 per cent in 2017.

20. If expenses incurred in administration are routinely increasing the cost of grants by more than half, that is a substantial outgoing, which should be addressed before resorting to the reforms proposed in this consultation document.

Claims where solicitors have not purchased adequate and appropriate PII

21. It should be made easier for clients of solicitors who did not have the correct professional indemnity insurance (PII) in place to get recompense.

22. If a problem occurs, and the correct PII is in place, then a claimant should receive a measured and proportionate claims response from the solicitor's insurer. It would be compounding an injustice if, because of failure to make certain that a regulated practice was properly insured, a claimant was then put through the ordeal of having to sue the solicitor and attempt to enforce a judgment before a claim will be considered, as 'all other avenues must be pursued'.

23. In such circumstances a fairer, more proportionate response would be the CF to pay out as if it were prudent insurer, and then you could pursue a recovery against the defaulting solicitor, using your powers as the professional regulator.

24. This approach could reduce strain on the CF, because you would be able to manage the costs of pursuing damages from firms or individual solicitors, and could cut proceedings short if you could see no hope of recovery; an option not available to clients who must pursue their solicitor to the full extent of the law.

Freelance solicitors

25. We outlined our concerns relating to access to the CF for those whose losses are occasioned by a defaulting freelance solicitor, in a letter to the Legal Services Board last year. Rather than repeating them here, we would direct your attention to paragraphs 73-79 of that document[3].

[3] https://www.legalservicesboard.org.uk/Projects/statutory_decision_making/pdf/2019/TLS_Response_-_SRA_PII_rule_change_application_to_LSB.PDF

Response to formal consultation questions

Question 1

Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

26. While we agree that it could be helpful to have a purpose statement for the CF, we do not think that the statement proposed in the consultation document is appropriate.

27. The statement as it is currently constituted could add to confusion because the basis for payments is discretionary, and they can be made in a variety of (sometimes contradictory) circumstances, responding to:

    - negligence where no mandated PII policy exists, but not otherwise;
    - losses through dishonesty, in some cases; and
    - failures of third-party claims, perhaps.

28. Some would-be claimants may be disappointed, if they read the purpose statement and believe that they their claims will be covered, but then go on to read the rules in detail and discover limits on their eligibility.

29. The statement refers to the requirement for the applicant to show that they have not contributed to the loss. This is problematic, because a person could contribute innocently to a situation which gives rise to a loss, (even in circumstances when his or her actions have been objectively or subjectively reasonable). The statement seems to make the condition absolute, although no such limitation appears in the rules. Furthermore, if discretion was exercised in this way, it could be challenged, because the absolute nature of the condition would indicate a failure to take into consideration relevant material factors or information, thereby fettering the discretion, and providing grounds for judicial review. It is also unclear what is meant by 'engaging with a client directly'.

30. In general terms the fund is there to do what the legislation requires, and the discretion is set within a framework, but ultimately decisions are made on a case-by-case basis. If the statement could be reformulated to reflect that reality, we agree that it could be of assistance to prospective claimants. However, it would be preferable for any such statement to be annexed to the rules and to refer prospective claimants to the published guidance, (which you should make available as soon as the new rules come into force).

Question 2

Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

31. Yes, we strongly support the decision not to make the CF a hardship fund, as that could have conflicted with its statutory purpose.

32. For the SRA to instead use its discretion not to pay out of the CF in cases 'in which the impact of loss is disproportionately low and it would not be appropriate to meet it

from a finite fund'[4] does not seem unreasonable, especially if guidance as to the factors that might lead to such a decision and explaining how the discretion is likely to be exercised are to be forthcoming.

33. While we are generally sympathetic with the intention to exclude 'large businesses', we reiterate our concern expressed in the previous consultation (then in relation to excluding 'large businesses' from cover under firms' mandatory PII), that measuring the size of a firm solely on turnover is too blunt a metric and without taking into consideration 'other relevant factors such as assets, number of employees or loans', it could lead to unfair outcomes.

34. We then argued that a £2 million threshold 'would capture some otherwise self-evidently small businesses'[5], and this remains a concern. We gave as a hypothetical example 'a self-employed property developer who sells just three £700,000 houses over a 12-month period'. Such businesses are not difficult to imagine, and they could have need of the additional layer of protection afforded by the CF.

35. Rather than having a guillotine, whereby businesses with turnover in excess of £2 million are automatically cut off from making a claim from the CF, a more equitable approach would be to have a defeasible presumption that such claims would be barred, but establish a process by which a would-be applicant could demonstrate that in other meaningful respects they are a small business, and perhaps there is a case to be made for requiring them to provide some evidence that the exclusion of their claim would result in non-trivial hardship.

36. The presumption that larger businesses will be regular users of legal services, and therefore ought to be able to assess risks and make arrangements for their own protection may also be erroneous, at least in some instances. In our previous response we posited the existence of a fulfilment house, which 'could employ 60 people working for a single client, from a single site, with millions of pounds in sales, and seldom require the services of a law firm. It would not be a sophisticated client.' Businesses like these should also have an opportunity to rebut the presumption that they ought to have been sufficiently legally savvy to look after themselves, (perhaps again with the inclusion of a hardship test).

37. The exclusion of claims from large charities is likely to have undesirable consequences. Charities can receive large donations, but the law prevents them from holding substantial reserves because they are meant to disperse these for their charitable purposes. The fact that a charity has an income of more than £2 million in any one year does not necessarily mean that at any given time a charity has £2 million available to cover or recoup uninsurable losses caused by a solicitor. The proposal could mean that the ultimate beneficiaries of the charity will be placed at a disadvantage. The discretion in draft rule 4.2 to take into account such evidence as seen fit only relates to broad estimates of figures, not the position of the charity generally.

38. Given the work of many charities, it is highly likely that a large proportion of their beneficiaries could have protected characteristics under the Equality Act 2010, so this exclusion could have implications for equality and diversity.

---

[4] https://www.sra.org.uk/globalassets/documents/sra/consultations/protecting-legal-services-prioritising-payments-sra-compensation-fund-consultation.pdf?version=48f5a8

[5] https://www.lawsociety.org.uk/policy-campaigns/consultation-responses/documents/tls-response-sra-pii-consultation-2018/

Question 3

Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

39. Yes, we strongly agree with the judicious exercise of this discretion. Although we would suggest that the discretion is 'overriding', rather than 'residual'. The discretion is conferred by section 36 of the Solicitors Act 1974. It may be exercised narrowly or widely, but only in a proper fashion, and at no point does it really become residual. It would be helpful if the term could be clarified.

40. It is proposed that in place of the hardship test that 'residual' discretion would be used to consider those 'rare cases in which the impact of loss is disproportionately low, and it would not be from a finite fund'. This might be because an applicant has already received a significant level of compensation to partly cover losses from another scheme or from an insurer; or if for any other reason the loss is immaterial when viewed in the context of the applicant's wealth or circumstances. The discretion to refuse eligible claims is not as expressly stated in the current Compensation Fund Rules but is obviously envisaged by section 36 of the Solicitors Act 1974.

41. Under draft rule 2.2 applications from people whose financial assets are valued in excess of £250,000 could be refused, for example, because it is considered that the loss suffered 'is not material'. This specific rule may not be necessary, as any grant could be refused under draft rule 4.2 (replicating the current rule 4.5). It enables relevant evidence to be taken into account when determining eligibility (as opposed to merits) and to make a broad estimate of any relevant amount.

42. We agree with the suggestion that the discretion might be used to refuse applications where losses arose from activities contrary to public policy, such as a tax avoidance scheme.

43. We also welcome the intention to produce guidance setting out how discretion will be exercised, but would encourage early guidance to be produced, which clearly sets out the parameters of that discretion, and we would be happy to assist in its development.

44. One possibility that could be considered is introducing a *de minimis* amount for claims. If a minimum threshold is specified that a single claim must exceed in order to become eligible for consideration for a grant from the CF, that could reduce administration costs as well as the sum total of grant payments.

45. As outlined with regard to claims from larger businesses, in our response the question 2, there could be a presumption against considering applications for grants below a minimum threshold, but this amount could be subject to carve outs for special cases, and there must be a discretionary power to allow lesser claims where not doing so would cause hardship.

46. If a *de minimis* principle were to be introduced, then different minimum thresholds for different classes of applicants could be set (e.g. individuals, unpaid experts, unpaid counsel, SMEs, large businesses). The graduated thresholds could be based on factors like income, wealth, or turnover, (although the disadvantage of this would be that it would introduce a new layer of administrative complexity, that the introduction of a *de minimis* amount is intended in part to avoid, so some cost-benefit analysis may be helpful).

47. The current CF rule 14.1 allows any grant amounts to be deducted as required. This ensures that an applicant will not be in a better position than they would have been had a loss not occurred. That reflects an important principle, but it is not directly replicated in the draft rules. However, draft rule 2.2 means that if it is felt that a loss has been compensated to a material degree by other means then a grant may be refused. This is not quite the same as current rule 14.1, and while in most cases it should be capable of achieving the same result, the current rule appears to offer more latitude.

Question 4

Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

48. No, this could lead to people with otherwise wholly valid claims being denied compensation. For example, limiting applications to the those who received the legal services would exclude buyers in conveyancing transactions who have lost money because of the dishonesty of their seller's solicitor (or vice versa), as well as other third parties who suffered losses because of a solicitor's dishonesty or failure to account.

49. It is suggested that in most such cases, clients would be able to recover losses from their own solicitors, or their solicitors' insurers. But it is acknowledged that this will not be the case for all solicitors, for example sole practitioners, and this could lead to very substantial or unrecoverable loss in a situation similar to *Dreamvar*[6]. It is also unclear where unrepresented third parties would turn if they suffered such a loss.

50. Situations such as these would pose a serious reputational risk to the profession and undermine public trust in the wider market for legal services, because they could easily result in blameless people being left to shoulder the cost of losses that were in fact the fault of SRA-regulated solicitors.

51. The business transacted by and through solicitors requires a system of mutual reliance and trust. This is different from surveyors' work, for instance. And for the avoidance of confusion, the CF should insofar as possible mirror the protections provided by solicitors' PII, as set out in the MTCs.

52. A solicitor can be responsible to ensure that their own PII cover is sufficient for their needs, and that risks under their own control are managed effectively. But, the removal of the relative certainty provided by the CF's current arrangements would mean that solicitors could no longer rely upon authorisation to mean that all solicitors have PII on MTC and equivalent cover from CF. Liability concerns could increase the cost and difficulty of conducting business, specially where large amounts of money are involved.

53. In addition to the reputational damage that the profession would suffer if solicitors are forced to bear direct liability for the default of other solicitors[7], this could have unintended consequences for the cost of solicitors' PII. This is because premiums would have to be adjusted to reflect the increased risk of claims relating to the work of legal professionals from outside of the firm. Under the current system, the CF attempts to cover such claims at cost, but insurance companies are for-profit

[6] Court of Appeal [2018] EWCA Civ 1082

[7] As opposed to indirect liability through the CF.

businesses, and in a hard insurance market they exercise considerable caution when pricing novel risks. Solicitors may be compelled to pass increased PII costs on to their clients.

54. The SRA's glossary defines the word 'applicant' 'for the purposes of the SRA Compensation Fund Rules [as] a person applying for a grant out of the Compensation Fund'. If read literally, draft rule 3.1 could prevent someone who falls within the glossary definition of 'applicant' from making an application, when what it really aims to do is say that the only *eligible* applicants are people whose losses arise from services provided to them by a defaulting solicitor, as a client, trustee or beneficiary.

55. The difficulty with this rule is that it would leave a potentially growing number of people without any adequate remedy where a conveyancing transaction fails as a result of the dishonesty, or failure to account, or failure to insure by the solicitor of the other party to a transaction.

56. The proposal to place a limit on grants of £500,000 per claim could be a significant problem for clients buying or selling properties, anywhere that properties are exchanged for more than £500,000. This could prove especially problematic in London, where according to the most recent available data, the average house price is £477,000[8], meaning that a large minority of these types of claims would not be fully compensated.

57. Given that conveyancing is an area resulting in a high proportion of claims, it seems perverse to introduce measures which could lead to the fund paying out less, but at the easily foreseeable expense of people who have used a solicitor for one of the purposes most likely to generate a large claim.

58. This change would remove one of the chief benefits of using a solicitor for such transactions, and ultimately would be beneficial neither to consumers (who would no longer be able to select a legal service provider with a higher level of CF protection) nor the profession, unless the cost reductions made would result in significant savings to consumers generally that would generate substantially more business for solicitors. We do not believe that such an outcome is likely, and you have provided no evidence that would suggest otherwise.

59. One of the reasons behind the proposed reforms is the danger posed by large-scale fraud, such as investment scams. The barring of applications from those whose loss was not occasioned by their own solicitor could have particularly bad results in this area. In those rare scams where a dishonest solicitor is complicit, innocent investors may be told that the scheme's solicitor can handle everything, that they have the requisite expertise, and – because they are a solicitor – they can be trusted. It is part of the con, and these investors truly believe that the solicitor maintains professional values of probity and will look after their best interests. If a purpose of the CF is to maintain public confidence in the legal system, where is the sense – or the justice – in excluding applications from people like these?

60. In circumstances like these, the CF serves an important function; providing an assurance that the public can and should trust solicitors, and that where individual solicitors are dishonest and break that trust, the profession as a whole will step in to make good the losses.

[8] https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/housepriceindex/january2020

Question 5

Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

61. Yes, insofar as an explicit statement of this kind could make matters clearer for some potential claimants, however (as intimated in our response to question 4) expressly stating the right of this class of claimants should not exclude other classes of potential claimant, including those whose losses were occasioned by defaulting solicitors of whom they were not clients.

62. Also, it is not clear from Question 5, as it is posed, if this would extend CF cover for the defined class of claimant to matters of negligence that ought to be covered by solicitors' PII, although presumably this would not be the intention.

Question 6

Do you agree with the proposal to introduce a multiple application cap?

63. We recognise that where this has been supported by evidence, it may be justified to limit the scope of some claims, in certain limited circumstance which can result in large payments from the fund. However, we should all be aware that the introduction of a multiple application cap could result in unfair outcomes for consumers.

64. In the 2018 consultation, investment schemes were highlighted as a cause of concern. However, the extent to which such schemes have caused a significant drain on the CF following the injection of additional funds in 2018/19 is not clear from the evidence provided in support of the current consultation.

65. Many of the scam investment schemes will use a solicitor who may or may not be knowingly involved in the scam. Where a solicitor is not a knowing participant in a fraudulent investment scheme but has been negligent in not discovering its true nature, there will be the possibility of a claim on his or her PII. However, in those thankfully rare instances where a solicitor willingly participated in a dishonest scheme, it would be invidious for their innocent clients to be in a worse position. Allowances are made where a solicitor had no valid practicing certificate and the client is not expected to discover that fact for himself or herself in order to validate a claim, so it is difficult to see why the client should be penalised for not having verified that a scheme is genuine in order to receive compensation.

66. One change that we would suggest is that the cap should not apply to all claims relating to the same or connected underlying circumstances, but it should instead apply to all the clients of a particular firm with claims relating to the same or connected underlying circumstances.

67. The SRA Transparency Rules should also be amended to impose a requirement on solicitors to inform clients when the work that the solicitor is doing on their behalf may be subject to an aggregation clause (in the event of a claim on the solicitors' PII) or a multiple application cap (in the event of a claim from the CF). We previously suggested this latter requirement in our response to the 2018 consultation.

68. This adjustment to your current proposals – moving the cap from the event to the firm or solicitor – would allow clients to make better informed decisions about the risks they were assuming in choosing the services of a particular solicitor.

69. It could also discourage clients from simply accepting the solicitor recommended to them by a fraudulent investment scheme where the scheme's preferred solicitor is not a knowing participant. If those clients take the work to another solicitor, then that could increase the likelihood that the fraudulent character of the investment scheme is identified at an earlier stage. By this mechanism, this change to your proposals could further reduce the size and number of fraudulent schemes that could result in large-scale claims on the CF.

70. We welcome the fact that those proposals have been revised because trust in solicitors is essential; not only to the profession but for the legal system itself. The proposals would have suggested that clients should not trust their solicitor to advise on the bona fides of an investment scheme, the damaging consequences of which are easy to foresee. It is exceptional for solicitors to become involved in dishonest investment schemes, but if they do, the public must have confidence that redress of some kind will follow.

Question 7

Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

71. If the principle of a cap on multiple connected claims is introduced, there does not seem to be any pressing need to provide a fixed limit.

72. A more flexible, dynamic limit – that takes into account factors such as the particulars of the multiple application, the culpability of the individual applicants, the burden that the multiple claims would place on the fund, and the wider economic climate – could prove more effective and more equitable.

73. Having said that, a £5 million financial threshold does not seem inherently unreasonable. But we would be more comfortable with it being set at that level if an analysis of historical claims showing how many times that cap would have been breached could be provided, and the rationale for why it is considered to be an appropriate limit going forward. Alternatively, such research could reveal that £5 million is not an appropriate limit. The introduction of artificial rules which could inflict real harm and create great uncertainty, without appreciable benefits, must be avoided.

74. If this fixed financial threshold is to be introduced, then much as the current rules allow discretion in the application of the £2 million cap on any single claim, discretion should be exercised in relation to the enforcement of the £5 million cap for multiple applications, with exceptions being made to avoid results that would otherwise be unfair.

Question 8

Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

75. Given the specificity of some claims, it would be better to retain broad discretion in how grants are apportioned. Sound judgement in the exercise of these powers has

been demonstrated in the past. Having the flexibility to respond differently in different situations recognises the complexity of some cases and provides room to take account of particular circumstances where the application of a more rigid formula could result in inequitable outcomes.

76. Under the draft rules 10.1 and 10.2 for claims relating to the same or connected underlying circumstances, where the total amount of grants from the fund is likely to exceed £5 million, apportionment might be in equal sums; or payment per claim might be by reference to the size of the loss of the respective claimants as appropriate. Of these approaches, the latter seems preferable, although we appreciate that in the event of larger multiple applications it could be difficult to determine the relative size of individual applicants' losses.

77. It has to be recognised that some of these proposals could lead to great uncertainty for clients, who could not know how much they would recover until some time after all claims have been received, and it is difficult to see how such delay could be avoided. However, closing the date for applications too early could disadvantage the most vulnerable clients, who might not be aware of their rights and could miss the opportunity to claim.

78. We strongly disagree with the suggestion that 'an amount for each claim recovered per scheme based on what another regulator may pay in the same circumstances' could be set. The example of a case is given 'where another regulator is paying for losses arising from the acts or omissions of a professional such as a financial advisor in relation to an investment scheme', and say that for any applications received relating to the work of solicitors on that (or similar schemes), a decision may be made 'to pay out at the same level'. This would be an abdication of the responsibility to exercise discretion thoughtfully and with due regard to relevant circumstances. It also risks levelling down consumer protections, depriving prudent consumers of the option of using a profession with a better compensation fund, precisely in case such a circumstance should arise.

79. These draft rules do not seem to apply the proposed individual cap of £500,000 per claim to those who make their applications within the publicised timeframe. While we would prefer for clients to receive grants that are appropriately compensatory, we accept that the CF must be treated as a limited resource, , so that in some unfortunate circumstances it will be necessary to curtail grants so that the cost to the profession is not over-burdensome. This also relies on the regulator taking all necessary steps to identify risks and educate the profession.

Question 9

Do you have any other comments on the features of the proposal to cap multiple claims?

80. No.

Question 10

Do you agree with the revised approach to how we will apply the single application limit?

81. No. While we accept the idea of a single application limit in principle, it should not be lowered from the current level of £2 million.

82. The proposed cap of £500,000 per claim is more likely than the current cap to unfairly disadvantage claimants in some circumstances. For example, wealthier

clients or the victims of personal injury or medical negligence claims, who should have had awards or settlements in excess of £500,000. Fortunately, where it is deemed appropriate, exercising discretion to award a greater sum would avoid such circumstances.

83. According to the supporting data, the average grant from the CF is £20,000, with 75 per cent of grants under £5,000[9]. So, in practice the number of applications likely to be affected by the £500,000 cap is relatively low. Nevertheless, as a matter of principle, people who have been defrauded by their solicitor should be eligible to apply for compensation, regardless of their means or a perception of their deservedness. At a time when other professional compensation schemes, such as the Financial Ombudsman Service, are increasing their maximum pay-outs[10], this would send entirely the wrong message to consumers, and criticism in the press would further undermine public confidence in the profession, and legal services more generally.

84. It should never be forgotten that for the unlucky claimants who might be affected by a £500,000 limit, the effects could be devastating. Your belief that the numbers of claimants likely to be affected by such a cap would be small, implies that the potential for the claims that would have a significant adverse impact on the CF is similarly small. Given that the discretionary nature of the fund means that within reason an application may be reduced or refused on appropriate grounds, the risk to the fund that this measure seeks to avoid may be disproportionate to the impact on individuals whose claims are above the £500,000 limit.

85. As alluded to above, one of the things that distinguishes solicitors from other providers of legal services is the high level of consumer protection that the profession offers its clients. Reducing these protections by lowering the maximum permissible claim from the currently level of £2 million to £500,000 would leave consumers of legal services exposed to greater risk, without providing any substantial benefits that might justify the change.

86. There is a statutory obligation to promote competition in the market for legal services, and presumably part of the thinking behind the proposed reforms is that if the CF levy is reduced, savings could be passed on to clients. But, as we demonstrated in our response to the consultation on reducing the minimum indemnity limits for solicitors' PII, even if there were a substantial reduction in costs for the profession, it is highly unlikely that they would be passed on to consumers. Even if they were, the percentage change in solicitors' pricing would almost certainly be too small to influence consumer behaviour. If that was true of PII, reductions in CF levy – a smaller regulatory cost – would likely have even less impact on the decisions of people with legal needs.

87. We have previously highlighted that competition in the market for legal services is multifaceted. While cost may be the most significant consideration for many consumers, others value factors such as the additional levels of assurance provided by solicitors' high levels of training, their professional ethos, and their sector-leading PII. The CF buttresses consumer confidence, by providing compensation when these other assurances prove inadequate. So, as we argued for the maintenance of the £2 million minimum indemnity limit for PII, we would argue that the £2 million maximum grant ought to be maintained for the CF; because in a truly competitive market, the

[9] https://www.sra.org.uk/globalassets/documents/sra/consultations/supporting-evidence-analysis-comp-fund.pdf?version=48f268

[10] https://www.financial-ombudsman.org.uk/news-events/annual-increase-award-limits

consumers of legal services deserve to have the option of using a profession with consumer protections that will prove adequate in all but the most extreme of circumstances.

88. Maintaining the £2 million maximum grant would also maintain equivalence between the CF and the minimum terms for solicitors' PII. Consider the confusion and anger of a consumer of legal services claiming against the CF, when they learn that someone with a similar complaint has received four times the compensation, simply because the matter was covered by their solicitor's PII. Such incidents would be poorly received by the public, who might begin to question the integrity of the profession, with negative consequences for access to justice.

89. If you believe that the introduction of a £500,000 cap is an unavoidable necessity, then we would encourage a generous interpretation of 'exceptional circumstances' when deciding whether to apply the limit in any particular case.

Question 11

Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

Other comments on the proposals

90. There are several issues raised in the consultation which we did not feel able to address elsewhere in our response, so we will consider them here.

Unpaid fees of counsel or experts

91. The removal of the possibility of recovering the unpaid fees of barristers or experts is not attractive because it elevates the perception that carrying out work on behalf of instructing solicitors is risky.

92. That is not good for the reputation of the profession, but more importantly it is not good for consumers of legal services. Imagine a scenario in which a client is on trial for murder, but their solicitor cannot secure the services of the best barristers or expert witnesses because of fears about what might happen in the event that they are not paid. This reform could have serious negative implications for access to justice.

93. The refusal to compensate experts who have gone unpaid is potentially more problematic. Part of the justification for excluding barristers is that they are legally trained and ought to be able to look after their own interest, but even if an expert could be said to be a 'professional witness' (such as a forensic psychologist, whose work primarily involves gathering and providing evidence in criminal or mental health cases), it may still be unreasonable to expect them to possess the necessary knowledge and expertise to protect their own legal interests. For first-time or occasional witnesses, the expectation is more unreasonable; why should an academic entomologist brought in to rebut evidence about the time of death in a murder case be expected to know about the complexities of contract law?

94. This is an area where the notion of a *de minimis* claim amount, outlined in our response to question 3 might be of practical benefit.

Exclusion of claims where a solicitor's PII provider is insolvent

95. It is proposed that grants should no longer be made where a solicitor's PII provider is insolvent, in cessation, or the defaulting practitioner's policy of qualifying insurance has been disclaimed. The circumstances in which this draft rule would come into play are thankfully relatively rare, and yet it represents the removal of a significant element of client protection. If neither compensation nor insurance are available, then clients may be left badly exposed to losses for which they are not responsible, particularly if there is no prospect of recovery from the solicitor in person. Therefore, we disagree with this reform.

Contributory negligence, mitigation, and cooperation

96. At present, CF rule 10.1 allows a grant to be refused or reduced, to take account of any act or omission by the applicant or anyone acting on their behalf that has contributed to or failed to mitigate the loss. That is replicated in draft rule 11.2. However, draft rule 11.1 also allows refusal or reduction in respect of dishonest, improper or unreasonable conduct by the applicant or anyone acting on their behalf. The addition of draft rule 11.1(k) serves the welcome purpose of making it clearer that the conduct of the applicant in respect of the circumstances creating the loss, or the manner in which an applicant pursues the application, could result in refusal or reduction. While not objectionable, this is not strictly necessary either, because draft rules 11.2 and 16.3 would encompass that. Draft rule 16.3 requires applicants to cooperate in pursuing a claim. Failure to do so will be taken into account in determining the merits of the application. This is replicated in draft rule 11.1(b), draft rule 11.2 and to some degree repeated in draft rule 15.3.

97. Although this is a 'belt and braces' approach, these changes do emphasise more clearly that the applicant is expected to be reasonable in pursing an application and that this requires that they cooperate with the regulator. That is an improvement on the current rules and should reduce the likelihood of behaviour that can actually border on the abusive and, in turn, reduce the burden on resources.

Equality, diversity, and inclusion

98. We are especially concerned about the removal of funding for applications to the CF. The implications of removing this funding extend beyond the kinds of issues that normally fall under the rubric of equality, diversity and inclusion, but here the difficulties are likely to be especially pronounced.

99. Such a prohibition could adversely affect vulnerable clients – including people with protected characteristics under the Equality Act 2010 – who might otherwise struggle to make applications without assistance. If the proposed purpose statement is adopted, and the requirement for applicants 'to demonstrate that they have taken appropriate steps to exhaust all other avenues of redress' is strictly enforced, it may prove an insurmountable obstacle for some applicants unless they have recourse to professional legal help.

100. Limits on the ability of applicants to claim for litigation costs and application fees could also have a deterrent effect that could lead to unfair outcomes, including discouraging applications from clients who for reasons of poverty, lack of ability or literacy skills, or because of a vulnerability of some other kind, would be unable to make an application without proper assistance, effectively penalising those for whom the CF ought to provide a crucial last line of defence.

101. As pointed out in the Bar Council's response to the earlier consultation[11], although it is felt the data suggests the number of such claimants is low, this potentially fails to recognise that people who are unable to apply without help may not have applied *precisely because they have not had appropriate assistance*. Which means that the figures could misrepresent the scale of the problem, which may be much larger than it initially appears

102. In order to promote and protect the interests of consumers and improve access to justice, people should be encouraged to seek proper, independent, professional help. Relying on free help runs the risk of not being in their best interests and does not come with the high level of protection and assurance that is available as a matter of course when instructing qualified and properly regulated lawyers.

103. These problems cannot be cured in all cases by making sure that the processes are simplified, as suggested, although of course simplifying processes will certainly help, and we would be happy to work together to accomplish that objective.

104. The Bar also previously made the important point that removing support for professional assistance would place an additional and unnecessary burden on already overstretched free advice services, such as Citizens Advice.

105. The exclusion of costs is unfair on claimants who may have been entirely reasonable in seeking to recover their losses through litigation which, if successful, might obviate the need to apply to the CF for part or all of their loses.

106. Indeed, it is arguable that since the CF is a fund of last resort, there is no good reason why a person who has sought redress from the courts before or in order to approach the CF, should not be able to recover the associated costs.

107. The current rules cover the costs of solicitors and other professional advisers as long as they are properly incurred and proportionate. Properly used, this discretion ought to be sufficient to exclude disproportionate or unreasonable claims relating to litigation costs and fees for assistance.

108. To reiterate, it would be damaging to the reputation of the profession if the proposal in draft rule 12.1(c) operates to prevent applicants from recovering from the CF fees payable to an applicant for which a defaulting practitioner is liable.

109. It is not only the consumers of legal services for whom these reforms could result in disadvantages with implications for equality and diversity, but solicitors as well.

110. To give just one example of how this might occur, if the maximum grant is reduced from £2 million to £500,000 that would mean that a sizeable proportion of estates could fall at least partly outside of cover. Charities that rely on bequests could direct their would-be future donors to use the services of larger panel firms for will writing, to avoid the danger of legacies going astray.

111. If they did so, this would be at the expense of smaller firms, which would have a disproportionate effect on BAME solicitors, as they are overrepresented in this sector, relative to the rest of the profession. It seems likely that there are a variety of situations that could result in similar unfairness.

[11] https://www.barcouncil.org.uk/uploads/assets/05fa18ae-97ef-4b9b-a78a131322f98591/barcouncilresponsetosraconsultationonprotectingtheusersoflegalservice.pdf

112. Limiting the CF so that it is not as good a safety net as solicitors' mandatory PII means that smaller firms are likely to be less able to compete with larger organisations. Consequently, over time, they will decline and with them, diversity and consumer choice.

Conclusion

113. While there is a small but not insignificant risk that large claims could wipe out the CF, the steady drain on its reserves comes from smaller claims. In our discussions with the insurance industry, they have repeatedly told us that their primary concern is managing the frequency of smaller claims, rather than the risk of a large claim.

114. This makes sense, because the very large claims are by their nature rare events, and it can be difficult to identify in advance the specific circumstances from which they might arise. Smaller, more routine claims are easier to categorise and examine, and with more granular research it should be possible to develop policy responses that target the specific behaviours that lead to those kinds of claims.

115. It is important to note that claims paid from the CF represent not only a failure of the defaulting solicitors to maintain professional standards, but a failure of regulation, so better targeted regulation up-front, better monitoring, and better enforcement could deliver savings in the form of fewer or less substantial claims against the CF. While we accept that changing the rules about how grants should be apportioned is a more convenient response to the problem – and understand that it may be the best that can be achieved with the resources available – it is not how the problem ought to be resolved.

116. Therefore, we would strongly encourage returning to this issue in the future, with a greater commitment to evidence-led policy-making that would shift the focus from restricting the size of claims to restricting their causes.

Response of the Westminster and Holborn Law Society ("WHLS") to the Solicitors Regulation Authority ("SRA") Consultation " Protecting users of legal services - prioritising payments from the SRA Compensation Fund"

About us

Comprising around 10,000 admitted solicitors and many more legal professionals, the WHLS constituency stretches from the south side of Oxford Street across the old Metropolitan Borough of Holborn to the City of London boundary. Many of its members are from within this area although membership is not restricted to those within it. Its sub committees enable the Society to comment on legal developments. The Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, matters affecting their practice, etc.

Objects of the SRA Compensation Fund ("the Fund") and the Consultation's Proposed Changes to them

Section 2.2 of the current SRA Compensation Fund Rules defines the *"primary objects"* of the Fund as being:

1. "*to replace money which a defaulting practitioner or a defaulting practitioner's employee or manager has misappropriated or otherwise failed to account for;* [**'the First Object'**] *and*
2. *to relieve losses arising from the civil liability on the part of a defaulting practitioner or a defaulting practitioner's employee or manager who in accordance with the SRA Indemnity Insurance Rules should have had, but did not have, in place a policy of qualifying insurance* [**'the Second Object'**]*."*

As the Law Society's website explains, the Fund provides "*a safety net for risks that professional indemnity insurance is unable to cover*". Whilst the First Object only enables grants to be made in limited circumstances (misappropriation or failure to account for money), the Second Object enables grants to be made in any case where a practitioner has incurred civil liability that would have been covered under the Minimum Terms of an SRA-approved Professional Indemnity Insurance ("PII") policy. That is not limited to liability to clients.

The Consultation proposes to maintain the First and Second Objects but in practice amends them and largely waters both of them down in significant ways. We draw attention to the following:

i. *"An applicant may only apply for a grant out of the Fund if the loss referred to in rule 3.2 relates to services provided: (a) by the defaulting practitioner for the applicant; or (b) to, or as, a trustee where the applicant is a beneficiary of the estate or trust."* We refer to this as '**the Client Restriction'**.

ii. *"No grant will be made under rule 3.3 where due to the insolvency or cessation of the insurer the defaulting practitioner's policy of qualifying insurance has been disclaimed or otherwise ceases."* We refer to this as the '**Insurance Failure exclusion'.**

Preliminary Comments

We responded to the SRA's previous consultation on proposed reform of both the solicitors' profession's PII and Fund arrangements. We welcome the SRA's decision not to proceed with the substantive PII proposals (of which we had been very critical). We acknowledge that the SRA's current proposals on the Fund are in some respects an improvement on those in its previous consultation (reflecting a welcome acknowledgment of points made in the responses it received). Nonetheless, the proposals in the current Consultation raise two fundamental issues: -

1. If enacted these proposals would amount to a clear and very material reduction in consumer protection. That relates not just to the headline-grabbing reduction in the maximum amount of any grant from £2m to £500,000, but also (and probably more significantly in practice) to the circumstances in which a grant may be made and to the class of persons who might receive grants ('grantees'). At a time when the SRA is constantly stressing the importance of protecting users of legal services, that is something that is noteworthy and needs to be clearly acknowledged.
2. In the SRA's original proposals the reduction in the cover provided by the Compensation Fund was a logical corollary of the proposed reduction in the cover provided by compulsory PII. For instance, there was a proposal to reduce the minimum compulsory PII cover to £500,000 per claim which was matched by a reduction in the maximum Compensation payment to £500,000 per claim. That is no longer the case. With the abandonment of the proposed PII reforms, the proposed reduction of the protection provided by the Fund stands alone, and needs to be justified on its own terms.

   We make four other preliminary points: -

3. In our view the Client Restriction is an unnecessary fetter on the Fund's discretion, which indicates a failure to understand how solicitors' practice works. We expand on this in our answer to Question 4 below.
4. In our view it is illogical to maintain the Second Object whilst applying the Insurance Failure Exclusion. It is the sort of legalistic distinction that gives our profession a bad name. Perversely, in such cases the clients of dishonest or reckless solicitors would fare better than those of solicitors who have complied with their regulatory requirements but (through no fault of their own) find themselves without the cover they contracted for. That does not seem to be a logical or principled approach. The SRA says that it wishes to concentrate on "ethical failures". The Fund was never set up solely for that purpose and in any event the First Object refers to failures to account for money, which do not necessarily involve an ethical failure.
5. It is regrettable that the SRA does not propose to address at this stage the issue of paying intervention costs from the Fund. This is an important issue of principle. When the Fund was set up the issue would not have arisen. Interventions are a clear regulatory function. Administration of a purely discretionary Fund is not. Some interventions are clearly justified. It cannot however be said that all the SRA's interventions to date have been free from controversy. There needs to be openness about interventions and their cost, and this will not be fully achieved so long as the SRA can "bury" the cost by raiding the Fund. That reduces the sums available to compensate potential grantees.

6. We also propose that the Fund should be administered by a separate body to preserve its integrity and independence. That might be a body with Trustees or Directors nominated 50% each by the SRA and the Law Society.

Response of WHLS to Questions raised in this Consultation

1. Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Yes on the whole. Inevitably however a wholly discretionary fund can never be entirely clear as to the circumstances in which it will pay compensation. In addition, we think that reference to "ethical failures" is regrettable, not wholly accurate and unnecessarily restrictive. As referred to in the answer to Question 4 below, the position of non-clients in our view is also not satisfactorily dealt with.

2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes.

3. Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

Yes.

4. Do you agree that the Fund should only be available to those who are the clients, or recipients, of the services of the solicitor/firm in question?

No. This is a discretionary Fund and it is unnecessary and undesirable to fetter its discretion in this way.

In general terms it must be right that the protection should only be applied to clients (or quasi-clients such as beneficiaries of an estate or trust) of regulated solicitors or entities. However even within these terms the definition has obvious lacunae. It would not for instance cover the next of kin of such clients or quasi-clients. That is presumably unintended and can be easily remedied.

The Consultation fails to recognise that the losses covered by SRA-authorised PII Policies are not restricted to civil liability incurred by solicitors to their own clients (or quasi-clients). Those with experience in the professional indemnity field can testify that in the ordinary course of their practice solicitors quite often incur civil liability to non-clients. If the Fund is to maintain the Second Object, then the SRA needs to consider these. Three (non-exhaustive) examples are given below: -

I. Potential beneficiaries. If say a testator instructs a solicitor to draft a Will, the testator is the client. However civil law allows a remedy to an intended beneficiary who loses out due to the solicitor's negligence,
II. The ultimate beneficiaries of solicitors' undertakings. Solicitors' undertakings can be properly given and relied on in a variety of circumstances. An obvious example is in a conveyancing transaction where the vendor's solicitor undertakes to discharge all charges on the property at completion. If the vendor's solicitor fails to do so, it will

be the purchaser who loses out. The purchaser's own solicitor is unlikely to be at fault because reliance on such undertakings is a normal and accepted part of a conveyancing transaction. The vendor's solicitor is under a strict liability to comply with the undertaking regardless of fault (and the vendor's solicitor may not be at fault if say the mortgagee gave a too low redemption figure but then refuses to discharge the mortgage unless a higher figure is paid). The purchaser's obvious remedy should be against the vendor (who will often not be worth suing) or the vendor's solicitor (of whom he is not a client). Consideration should be given to allowing the purchaser in some circumstances to qualify for a discretionary grant from the Fund if the vendor's solicitor still defaults and no other remedy is available. There are four possible scenarios: -

a) Neither the purchaser's lawyer nor the vendor's is regulated by the SRA. Clearly no grant from the Fund should be made.
b) The vendor's solicitor (who gave the undertaking) is regulated by the SRA, but the purchaser's is not. In our view no grant from the Fund should be made. The client has chosen not to instruct a regulated solicitor, and should not benefit from a Fund funded solely by regulated solicitors.
c) The vendor's solicitor is not regulated but the purchaser's solicitor is. There is an argument that the Fund should have a residual discretion to make a grant because the client has instructed a regulated solicitor and has no control over whom the vendor instructs. However, on balance we do not think that a grant should be made. The issue of unregulated lawyers has to be faced up to. The regulated solicitor has a discretion as to whether to accept an undertaking from an unregulated lawyer. If he does so without his client's authority, then he is potentially at fault. If the client instructs him to accept the undertaking, then the Fund should not be indemnifying the client for a risk voluntarily assumed by the client. The Fund should not be accepting liability directly or indirectly for the acts or defaults of an unregulated lawyer.
d) Both the solicitors for the vendor and purchaser are regulated. In this case our view is that the Fund should clearly have a discretion to make a grant.

III. Breach of Warranty of Authority claims raise similar issues to those relating to undertakings. In general terms if a solicitor represents that he or she acts for a party to a proposed transaction or litigation the other party and its solicitors are entitled to rely on that. If the representation turns out to be incorrect, the solicitor making the misrepresentation is strictly liable for any misrepresentation even if all reasonable steps were taken to confirm the presumed client's identity. Again, the party on the other side would probably have a claim against the misrepresenting solicitor rather than its own solicitor.

5. Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

Yes.

6. Do you agree with the proposal to introduce a multiple application cap?

Yes on the basis that this reflects the practice in many PII policies. This answer however is subject to our answer to Question 9.

7. Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

Yes.

8. Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

We think it best to keep all options open so as to retain the maximum discretion.

9. Do you have any other comments on the features of the proposal to cap multiple claims?

Paragraph 19 of the Consultation emphasises (in our view correctly) that the Fund is wholly discretionary in nature and that no person has an enforceable right to a grant. It may therefore be unnecessary to seek to bind the Fund's discretion in this way. Whilst individual proposals may make sense, there is a danger of unnecessarily fettering the discretion of the Fund. We refer to this further in answer to Question 11.

10. Do you agree with the revised approach to how we will apply the single application limit?

On balance that seems to be the best of the options given.

11. Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

In our view some of the underlying assumptions behind this consultation are flawed. We have referred above to the fact that some non-clients may be worthy of consideration for a grant.

We are also of the view that just as the definition of the Fund as a hardship fund is undesirable, so is the attempt to restrict it to ethical failures.

We do not think it appropriate to prohibit any grant for losses arising from an insurer's insolvency. That raises an immediate anomaly in that the Consultation still proposes that grants can be given where the solicitors have failed to obtain the required insurance. It has always been one of the problems with the Fund that in practice it tends to be relevant only to smaller firms . That will be emphasised if it is restricted to ethical failures, because PII should cover innocent partners of even dishonest solicitors and the larger the firm the less likelihood that all the partners will be tainted with the dishonesty of one. The insolvency of an insurer can however affect a firm of any size. If such events are not excluded from consideration for a grant, it would have the indirect benefit that larger firms will no longer be able to say that the Fund can be of no conceivable benefit to them or to their clients.

We appreciate that the wider the class of person who could qualify for a grant, the greater the cost of the Find is likely to be. However that cannot be a conclusive argument for irrationally excluding certain classes of potential claimants from access to the Fund. There is a

reputational issue and there will be real victims if the Fund's discretion is mistakenly restricted. There is little point in having the Fund if it cannot help a substantial number of those it should. At the end of the day the fact that the Fund is wholly discretionary should be a safeguard against it being overwhelmed.

Colin Rimmer

Response To SRA April 2020 Consultation :- “Protecting Legal Services – Prioritising Payments”

Forward

There is no more accurate, exacting and representative appraisement and denunciation of the SRA’s compensation scheme and the SRA’s maladministration of the scheme, than an account from a legitimate claimant who has been denied a grant of compensation by the SRA for illicit reasons in relation to a claim for loss against a fraud contrived entirely by SRA regulated solicitors.

This consultation response will practically illustrate the scheme failing to compensate victims of the Ecohouse fraud and should prove that, not only is the scheme not fit for purpose under its existing rules, but is being maladministered by the SRA for purely financial reasons. Since the scheme is not presently fit for purpose, it is unacceptable for the SRA to propose further degradation of the feeble and inadequate protection offered through the scheme to an absolute minority of applicants who manage to circumnavigate the scheme’s deliberately obstructive rules and to counter argue against the SRA’s illicit excuses for denying grants of compensation.

The SRA state that the basis of reform is to protect the SRACF further and to target compensation grants to those that really need it. The SRA should not be protecting the fund further because that leads to increased indemnity gaps in which neither Professional Indemnity Insurance, PII or the SRACF provides compensation for loss caused due to dishonest or fraudulent solicitors.

The SRA cannot ethically justify reducing contributions to the fund because the fund coffers are reasonably healthy on account of the SRA denying grants to legitimate claimants against the scheme, but that is precisely what the SRA has done. The SRA is reducing levies to the scheme as a result of its SRACF officers dissuading, cheating and deceiving claimants out of entitlement to redress.

The SRA states that interventions are a damaging expense against the compensation fund because the fund finances interventions. This is not, however, a justifiable excuse for the SRA to negligently evade interventions in order to conserve SRACF funds – that is precisely what occurred in the Ecohouse case despite multiple client complaining that their funds had been misappropriated. The SRA took no action, permitted the fraud to continue for 11 months, and hundreds more Ecohouse clients suffered loss as a consequence.

The SRA’s neglect to intervene in order to conserve its compensation funds rather than preventing solicitor clients suffering loss due to fraud is a deplorable and unacceptable act of betrayal by the SRA and exemplifies just how conflicted the SRA is whilst administering its own compensation scheme.

It is only through the SRA's neglect to take preventative measures that the SRACF is put under pressure to compensate client loss due to solicitor’s involvement in fraudulent schemes. The SRA shows no conviction to tackle these unscrupulous solicitors or to prevent the abuse of client accounts and escrow facilities – it just issues feeble warnings on its web site. These warnings have little or no use as a deterrent – the solicitors involved in the Ecohouse fraud admitted during their tribunal that they simply hadn't read the SRA’s warning notices.

The SRA states that its objective is to operate the fund transparently but patently lies about solicitors dishonesty in order to deny grants of compensation for fraud, perversely arguing that solicitors have merely “Failed to account” for client funds, as opposed to being “Dishonest” !

SRACF Technical Officers influence the SRA's non-independent adjudicators by falsely referring to cases of fraud as "Failed investment schemes" in their preliminary reports and despite multiple breaches of SRA principles and misappropriating £Millions in client funds, they argue that solicitors have merely “Failed to account” for client funds - it’s a patent lie repeated by multiple SRA officers.

Evidence exists of SRA adjudicators utilising fictitious Police smears citing non cooperation with Police investigations in order to limit or refuse grants from the SRACF. The SRA cites that an applicant has contributed to their own loss by allegedly not co-operating with Police investigations - these groundless arguments do not relate to compensation scheme rules at all and have no basis in law.

The SRA state that its reason for reforming the SRACF is to "Enhance Consumer Protection" - that is a gratuitous lie. These negative reforms are aimed at reducing the SRA’s exposure to claims and will further decimate consumer protection because the SRA’s objective is to limit grants by capping sums paid to individuals or those involved in a related claim. The SRA’s intention is to cheat claimants out of fair and proportionate compensation despite solicitors committing fraud or being dishonest.

The SRA’s practice of “Rigging” investigations, allegations and “Due process” in order to evade large compensation claims is a flagrant abuse of the SRA’s regulatory powers in its attempts to reduce its exposure to compensation claims. This is a deceitful and illicit betrayal of legal service consumers.

The SRA argues that it has no hardship rules in place, yet presents onerous, detailed and prying questionnaires to claimants regarding their financial status. It is a deliberate SRA tactic to dissuade claimants from continuing with the claim process. In effect, the existing SRACF rules, onerous questionnaires and dirty tactics employed to dissuade claimants from pursuing claims already amount to hardship rules and very effectively exclude those most in need of redress.

The SRACF was originally established by statue, so was never intended to be a discretionary fund. The SRA has skewed the purpose behind the scheme by dreaming up this discretionary argument.

If the SRA is able to use discretion on making payments from the SRACF, it implies that the SRA believes it’s obligation to comply with its remit to provide viable protection under the auspices of the Legal Services Act 2007 is purely optional also – it is NOT. It appears that the SRA CEO is in denial of the SRA’s remit under the Legal Services Act 2007 to provide viable protection ; not just a facade.

The mere mention of the word “Discretionary” opens the fund up for abuse and subjective perversion by SRACF officers at the behest of CEO himself. The fund is being maladministered when it should be ensuring redress is provided to those who suffer loss at the hands of dishonest solicitors.

Most investors had no prior knowledge of the SRA, let alone the SRACF at the time they made their investment. In fact, even 3 years after Ecohouse was intervened upon by the Brazilian Police in 2014, investors had no prior knowledge of the SRA's compensation scheme because the SRA kept it a close guarded secret. The SRA only informed Ecohouse clients that they were entitled to make a claim from the scheme after significant lobbying of the SRA by MPs – had MPs not lobbied the SRA, it is highly unlikely that the SRA would have informed Ecohouse clients about the compensation scheme’s existence. The SRA just doesn’t want to encourage claims where large frauds are concerned.

SRA skulduggery precluded a grant of compensation to Ecohouse claimants, with the SRA citing that the solicitors didn’t provide a legal service. The SRA knows that is grossly immoral because the inevitable consequence of fraud is that any notion of a firm providing the agreed legal service to its clients is compromised as the solicitors seize on their opportunity to benefit from the fraud.

Still the SRA refuses to concede the solicitor dishonesty & the SRA’s negligence for not intervening.

General Notes & Comments On The SRA Consultation

The SRA states

> "our rules and the case law that has considered how the Fund operates make it clear that a grant from the Fund is made wholly at the discretion of the SRA and that no person has an enforceable right to a grant. This gives rise to a residual discretion about whether to make grants."

The SRACF was originally established by statue, so was never intended to be a discretionary fund.

The SRA admits the funds statutory purpose under point 3. of its reasons for considering changes :-

> “We want to make sure that we are managing the Fund in as effective a way as possible in light of its statutory purpose ...”

The inclusion of the word discretionary opens the fund up to abuse. There is no question that the SRA has abused the rules and its regulatory position in the Ecohouse case for a whole variety of reasons :-

1. Attempting to conceal and refusing to admit the dishonesty of fraudulent solicitors.
2. Diverting prospective claimants into pursuing professional indemnity claims against the insurer when the SRA knew full well that victims had no prospect of success because insurers are not obligated to indemnify acts of fraud committed by the SRA’s regulated members.
3. Taking 3 years to notify Ecohouse victims of their entitlement to claim from the scheme and then perversely arguing that their claims were out of time.
4. By dissuading claimants against claiming from the scheme because it is a discretionary scheme of last resort and that claimants would have to prove (at great expense) that all other possible routes to redress had been exhausted.
5. Immorally applying hardship rules where they should not apply, despite an admission of dishonesty from the SRA regulated solicitor, Ecohouse director, and former Tory Councillor.
6. Referring to the case as a “Failed investment”, knowing that the scheme was a fraud from the outset and the case being proven as a fraud in two substantive hearings in Sprint 2019.
7. Suggesting that Sanders solicitors were only culpable of a “Failure to account” when they had facilitated, aided & abetted a fraud which resulted in mass misappropriation of client funds.
8. Suggesting to claimants that they were responsible for their own loss due to supposed non co-operation with Police investigations - a fictitious accusation that was distinctly separate from the date of loss of client funds by a matter of several years.
9. Suggesting that claimants were responsible for their own loss because they had not conducted sufficient due diligence – given that the fraud occurred outside the recorded book-keeping activities of the Ecohouse company, no degree of due diligence could have detected it. SRA adjudicators were immorally attempting to pin the blame for loss on claimants themselves.
10. Ultimately refusing to provide any redress against SRA members patent and dishonest involvement in a fraudulent scheme and its Ponzi style transactions.

The SRA states :-

> "For applications brought on grounds of dishonesty and failure to account, we will only consider paying out if the activity was of a kind which is part of the usual course of a regulated person's legal business."

This is totally unreasonable and unacceptable because fraud or money laundering is not the usual business of a solicitor firm, but occurs as a direct result of their patent dishonesty and their comprehensive breach of legal contract terms with their clients.

By making this stipulation as part of the SRACF rules, the SRA is declaring that it has no intention of providing redress against acts of fraud and money laundering by the SRA's regulated solicitors.

The SRA used this baseless reasoning and deplorable tactic as an excuse to deny redress against the Ecohouse fraud. It now disgracefully seeks to write it firmly into the scheme rules so that it can deny redress against fraud whenever it chooses to – especially where large frauds are concerned.

Right from the outset, multiple SRA officers conspired to masquerade the Ecohouse fraud as a "Failed investment" scheme that the SRA would not have to provide redress for. Despite the Ponzi fraud being proven in Spring 2019, the SRA's officers and its CEO have been intractable. They have refused to correct their flawed perspective or revisit prosecutions after compromising justice through deceitfully withholding evidence of fraud and dishonesty from tribunal. The SRA has also refused to revisit their illegitimate refusal of a grant of compensation from the SRACF for a colossal and heinous act of fraud contrived entirely by the SRA's unscrupulous members.

The below extract demonstrates how the SRACF Technical Officer influenced the SRA adjudicators into dealing with the Ecohouse cases as a "Failed investment scheme" rather than a "Fraud".

> Extract of SRACF Officer's Preliminary Report To Adjudicators (click)

Even the SRA CEO was referring to the case as "Ecohouse Investment Scheme Failure" in a Parliamentary Briefing which following the original SDT hearing in November 2016.

> SRA CEO Refers To Ecohouse As Collapsed Investment To Scores of MPs (click)

The briefing had accompanied a letter that Paul Philip had written to scores of MPs who had Ecohouse impacted constituents. The SRA had been gathering evidence about Sanders & Co.'s involvement in fraud from 1st December 2013 when the firm was first reported for misappropriating client funds, yet the SRA deceitfully refused to allege or acknowledge Sanders solicitor's dishonesty. The SRA was aware that Ecohouse was intervened upon by the Brazilian Police in "Operation Godfather", so were conscious of the fact that there was something untoward about the scheme and that it had not simply collapsed, as the SRA would have liked to have been the case.

Proposals Carried Forward

The SRA states that it proposes to deny grants towards costs of professional help to claim from the compensation scheme. The is wholly unreasonable and unethical because defrauded solicitor clients have no means by which to pursue compensation claims by appointing a solicitor, and their prospects of success against the SRA's Machiavellian tactics and deceit are virtually zero if they attempt a claim themselves. Lay people simply don't have the wherewithal to make a compensation claim in such disadvantaged circumstances, especially when they are in a distressed state after being defrauded.

Even though the vast majority of Ecohouse SRACF claimants appointed a solicitor to make the claim in the hope that it would improve their prospects of success, a grant was still refused. It is believed that the denial of a grant against the Ecohouse fraud was preordained as soon as the SRA realised the sheer extent of the fraud, and long before any claim was made against the fund.

By denying a grant towards the cost of alternative routes of redress, the SRA is preventing claimants from proving that other routes to redress have been pursued and eliminated, which is something that the SRA stipulates as a qualification for being eligible to claim from the scheme. This would effectively preclude those in true hardship from claiming because they wouldn't be able to satisfy the SRA's onerous criteria to prove other routes to claim were exhausted, especially given that they are unlikely to possess the financial means to pursue alternative claims on account of being defrauded. As usual the SRA does not put itself in the position of a fraud victim as it proposes these inane cost cutting exercise to lower its exposure to claims at the expense of legal service consumers.

In the Ecohouse case, although the insured firm had taken out additional insurance cover at a cost of £8,000 to protect themselves in their capacity of escrow agents, they were ultimately denied indemnity by their insurers on the basis that they hadn't provided a regulated legal service which was the usual business of a solicitor (in other words they laundered client funds instead of legally protecting their funds as per the agreed escrow contracts). This should be a situation in which the SRA offers a grant because the firm's insurance cover was insufficient to indemnify an act of fraud.

500k limit

Back in 2014 the SRA consulted on a plan to cut minimum cover to £500,000, but this was blocked by the Legal Services Board for lack of supporting evidence. The Gazette only reported this in December 2019, yet here it is again back on the list of proposals – it's perverse !

> SRA Abandons 5 Year Quest To Slash Minimum Indemnity Cover (click)

Clearly, now that the Tory Government has a large majority, the SRA believes it has Carte Blanche to do whatever it wants because the Government will back it and opposition has little prospect of contesting it. This £500k limit re-emerging is a clear indication that the SRA believes it can sneak in destructive policy to dismantle protection with impunity whilst the Tory Government exploits its majority. It also suggests that the SRA is NOT independent of Government and is trying to undo the benefit brought in by the opposition in the form of the Legal Services Act 2007. It is common knowledge that Tory Governments seek to deregulate and unpick public rights and protections.

The SRA are not comparing like with like when they state that other regulators only pay out to a £500k limit. The vast majority of members of the ICAEW are chartered accountants, not solicitors that can abuse their client accounts. Chattered Accountants are not involved in conveyancing either. The SRA's arguments appear to be groundless and unmerited.

It is interesting how the SRA cites an example of a paraplegic to argue the case for paying out over the limit in exceptional circumstances. That only involves a single claimant and it is highly unlikely that the SRA would make the exception if someone lost £2 Million in a property conveyance for instance.

Barristers

Barristers have the legal skills to protect themselves against solicitors who don't pay their fees. The fund should be exclusively provided for solicitor clients who have no possibility to pursue other routes to redress because of the compromised position they have been placed in through solicitor dishonesty.

Conduct of Applicant

The conduct of the applicant after they have suffered a loss is totally irrelevant and is not a justifiable reason for reducing a grant from the compensation scheme. This ridiculous suggestion once again opens up the scheme to abuse, like for instance denying or reducing a grant because an applicant had supposedly not cooperated with a Police investigation - a matter which has no relevance to the compensation scheme rules, did not contribute to their loss in any way, and was distinctly separate from the claimants loss by a matter of several years !

> SRA Adjudicator's Use of Police Smear To Deny SRACF Grant (click)

You could reasonably state that the Met Police has assisted the SRA with denying a grant of compensation from the SRACF and you'd be completely correct. The Met Police smear was contrived and fictitious – for the avoidance of doubt, the emails which the Met Police report as being unhelpful were not even sent to the Met Police and expressed legitimate concerns about the investigation being sidelined (which it had been). After 5½ years of investigation, no arrests have been made despite the Ponzi fraud being proven, the Ecohouse director admitting fraud through misrepresentation to the Insolvency Service, and Sanders solicitors direct involvement in aiding and abetting the fraud. The objectives of the Police smear were two fold, namely, to assist the SRA with denying claims, whilst also taking the heat off the Met Police for failing to bring prosecutions. The whole distasteful matter is a topic in itself and to voluminous to cover in this report.

Citing supposed non-cooperation with the Police through utilisation of a deliberate smear calls SRA adjudicator's conduct into question, not the applicants. It seems that the SRA is so desperate to reduce it's exposure to claims that it will stop at nothing, and utilise all nature of dirty tactics, in order to deny a grant of compensation.

It is not appropriate to place so much emphasis on investors conducting due diligence. No level of due diligence could have alerted an investor to the fact that the Ecohouse scheme was a fraud. Given that the SRA lived in denial of the case being a fraud for over 4 years, the SRA adjudicators have some gall to suggest that investors could have deduced that fact prior to investing! The SRA still hasn't conceded the fraudulence and dishonesty of Sanders solicitors, so SRA adjudicators are in no position to give lessons to investors about detecting fraud before they invest. This is especially pertinent given that precious little company history existed at Companies House at the time and Ecohouse was not considered to be risky. This extract from the SRA adjudicator's report indicates their unreasonable due diligence imposition on claimants.

> Adjudicator Tries To Credit Losses To Victim's Lack of Due Diligence (click)

Further to this, the security and protection afforded on the investment, as stated in sales brochures were a pack of lies - Charles Fraser Macnamara admitted the same to the Insolvency Service and also admitted his dishonesty and laundering of Ecohouse client funds to various destinations.

No degree of due diligence can prevent determined solicitors from abusing their position of trust when they make a conscious decision to commit fraud. SRACF adjudicators scandalously and reprehensibly sought to offload blame for victims loss onto victims themselves when the truth is that they were defrauded entirely due to unscrupulous solicitors reneging on the agreed legal due diligence clauses in hundreds of Ecohouse client escrow contracts. The fact that solicitors can so readily renege on their legal contracts without even being struck off by the SRA illustrates just how inept the regulator is at protecting legal consumers and adequately punishing serious fraud.

Many investors have no previous experience of making investments so can't be expected to have the wherewithal to conduct detailed due diligence. That role is explicitly afforded and expected of the appointed solicitor firm – hence their professional fees. It would make no sense for hundreds of investors to be attempting to conduct the due diligence that the solicitor firm was appointed to undertake and was concisely defined in legal escrow contracts. e.g. Checking development land was owned by Ecohouse. The solicitors were appointed to protect their clients on the basis that they possessed the requisite knowledge and expertise to conduct that essential work on behalf of their Ecohouse investor clients, but chose instead to betray them all.

Some 900 investors placed funds in the Ecohouse scheme and many will have attempted to undertake some form of basic due diligence checks, meet the solicitors in person, or asked their financial advisor to scrutinise the investment scheme. If it had been at all feasible for one of them to detect that a fraud was taking place, then by sheer numbers and probability they would have detected it. The fact that hundreds of investors, financial advisors and agents detected nothing suspicious, signifies how well the fraud was concealed. It also illustrates how ridiculous SRA adjudicators subjective decisions are when they suggest that investors contributed to their own loss through lack of due diligence.

It is patently unjust and unreasonable for the SRA to expect the unachievable. Not only was it unachievable for investors to detect the fraud, but also numerous financial advisors and investment agencies who had conducted their own due diligence failed to detect the fraud.

The SRACF officers who dealt with the Ecohouse case had the temerity to suggest that investors should have sought further advice from another solicitor firm or financial expert. That very much suggests that the SRA has the opinion that a solicitor client should not place trust in their appointed solicitor at all, and should employ two solicitors - one solicitor to protect their financial interests and another solicitor to ensure that the first solicitor was indeed protecting their financial interests, conducting the agreed due diligence, and wasn't intending to defraud them. This suggestion by the SRA is utterly preposterous. A client should be able to trust a solicitor to the "Ends of the Earth".

Sanders & Co solicitors did not conduct the due diligence they had agreed with hundreds of their clients and what's more, defied an SRA obligation to inform their clients that they were intending to renege on their legal due diligence and the provision of legal protection of their client's funds. They never provided their clients with the necessary trigger to seek alternative legal advice, so their clients were given no opportunity to protect themselves or mitigate their losses.

There is absolutely no point whatsoever in an SRA adjudicator retrospectively suggesting steps an investor should take prior to submitting funds to an investment scheme in order to later be entitled to a grant of compensation from the SRA's compensation scheme. That is both, adding insult to injury and slamming the stable door after the horse has bolted because it is too late for investors to be able to satisfy the nitpicking compensation scheme rules after they have been defrauded - especially when they have no prior knowledge of the SRA's compensation scheme, or indeed any reason to distrust an SRA regulated firm with 40 years standing, at the time they placed their investment.

Contributions To the Fund

There is absolutely no justification for contributions to the fund to reduce whilst misconduct in the profession and incidence of fraud in the profession are on the increase. Increased misconduct is deemed to be due to the SRA's failure to adequately prosecute solicitors who involve themselves in fraud, or to set any meaningful disincentive to dissuade solicitors from involving themselves in such schemes. The SRA should threaten criminal prosecutions and jail terms.

Evidence of the SRA's lack lustre prosecutions is all too evident from the Ecohouse case, with none of the solicitors being struck off at tribunal and no fraud prosecutions 5+ years later. A completely bizarre and unacceptable perversion of justice by any reasonable person's standards.

Revised Proposals

Purpose & Operating Principles

At point 68 the SRA states that the fund is to compensate the ethical failures of solicitors, yet there is no mention in the Purpose Statement about compensating acts of fraud by the SRA's regulated members. The Ecohouse case was proved to be a fraud, yet the SRA has failed to compensate the dishonest acts of the solicitors concerned. The SRA cannot possibly argue that a solicitor reneging on agreed legal due diligence to facilitate fraud is not an ethical failure. The SRA needs to make it patently clear that it will compensate solicitor clients when they facilitate, aid or abet fraud – this should not depend on the quantum of the fraud – the SRA should be compensating fraud regardless.

If compensating fraud is a drain on the compensation fund, then the SRA clearly needs to :-

1. Take more robust preventative measures to stop the abuse of client / escrow accounts.
2. Implement strict regulations with serious implications for solicitors who facilitate fraud.
3. Ensure that robust penalties and criminal prosecutions and jail terms result from solicitors involvement in fraud.

Eligibility

At point 71. the SRA states :-

"We agree that we should not define the Fund as a hardship fund, and that this is not the statutory basis on which the Fund was set up."

It is good that the SRA is finally conceding that the fund is statutory and not discretionary.

Hardship

The SRA argues that the reason for the reforms is to focus payments from the scheme to those who are most in need. The SRA is living in ignorance of the fact that its onerous rules and qualifying conditions exclude the most vulnerable claimants who have neither the means nor the wherewithal to argue against the SRA's deplorable reasons for its rebuttal of claims.

The SRA argues that it has no hardship rules in place, yet presents onerous, detailed and prying questionnaires to claimants regarding their financial status. It is a deliberate SRA tactic to dissuade claimants from continuing with the claim process. In effect, the existing SRACF rules, onerous questionnaires and dirty tactics employed to dissuade claimants from pursuing claims already amount to hardship rules and very effectively exclude those most in need of redress.

The thread below proves that the SRA requested proof of hardship (questionnaire) from Ecohouse fraud victims despite an admission of dishonesty from Charles Fraser Macnamara to the Insolvency Service.

> Charles Fraser Macnamara Admission of Dishonesty & Disqualification (click)
>
> Evidence That SRA Requested Proof of Hardship (click)

The SRA states that the fund is there to provide redress against the dishonesty of regulated solicitors, but even when SRACF officers are presented with an admission of dishonesty by solicitors involved, they impose hardship rules.

The "How the fund works now" section states that the SRA does not impose hardship rules where a solicitor has been dishonest - **this is a patent lie** - the SRA imposed hardship questionnaires to Ecohouse claimants (as proved above) despite an admission of dishonesty by one of the protagonists to the Insolvency Service. So the SRA is imposing hardship rules and probably has been for years !

Limiting applications when no legal service has been provided

This is an unethical proposal from the SRA. Once again the SRA are perversely and immorally attempting to reduce their exposure to claims instead of protecting consumers.

It is grossly unfair and unreasonable of the SRA to suggest that because a solicitor has not provided their clients with a legal service, that they cannot be afforded a grant from the compensation scheme. In the Ecohouse case Sanders solicitors unethically and dishonestly reneged on their legal agreements in order to aid and abet a fraud. There should be no question regarding whether the compensation scheme should offer a grant of compensation against fraud – it is the most serious act of treachery that a solicitor can inflict on their client – i.e. the theft of their funds – this simply has to be compensated.

If a seller’s solicitor was dishonest in a conveyancing transaction it would not be fair to leave the buyer’s client without recourse to redress. Neither would it be fair if an opposing divorce lawyer ran off with settlement funds. There has to be redress against these events.

Applying A Cap To Multiple Applicants

This is an attempt by the SRA to lower its exposure to claims in which significant number of claimants are involved, e.g. Investment frauds.

Interventions

The SRA's argument for reducing payments on the basis of fewer interventions taking place are a product of the SRA deliberately avoiding interventions because of the cost to the SRACF.

The SRA’s failure to intervene in the Ecohouse case on the suspicion of dishonesty is deemed to be an act of deliberate negligence by the SRA because numerous Ecohouse clients complained to the SRA about Sanders solicitor’s misappropriation of their funds from 1st December 2013, yet the SRA did nothing ! The consequence of this was that the fraud continued for almost another year and hundreds more clients suffered loss. The nearest the SRA got to an intervention was to threaten it in a letter to Sanders solicitors about a year after clients had complained about misappropriation of their funds, at which point Sanders panicked and halted their fraudulent activities - activities that had continued right under the SRA's nose despite the solicitors knowing they had been reported to the SRA. The SRA letter turned out to be an empty threat – the SRA never did intervene against Sanders solicitors. They shut down years later when their insurer refused them indemnity.

It is clear that the SRA has abused its position and acted negligently by not intervening to halt a fraud. The SRA in fact made every effort to conceal the fraud and the dishonesty of Sanders solicitors in order to evade a significant compensation scheme payout. A complaint was raised against the SRA in relation to this matter, but of course the SRA refused to address the complaint.

The SRA briefly employed a forensic investigator to scrutinise the affairs of Sanders & Co., but perversely decided not to intervene in a colossal case of client fund misappropriation. The SRA knew that an intervention would have had dire consequences against the compensation fund. It is grotesque that the SRA would subvert its own rules and guidelines by not "Intervening upon the slightest suspicion of dishonesty." A complaint was raised regarding this significant SRA failing.

CAR_CP_04 – SRA Fails To Intervene (click)

The SRA refused to tackle the complaint - clearly it was too controversial for the SRA to face up to its inadequacy and failure to protect hundreds of Ecohouse clients against Sanders & Co.'s illicit release of their funds under false pretences. The SRA's failure to address the complaint signifies that the SRA intentionally circumvents the complaints handling process in situations where it is too embarrassed to own up to is inexcusable incompetence, negligence or malevolence.

SRA's Defunct Complaint Handling Process (click)

SRA Opacity

Scores of Ecohouse victims wrote to the SRA's information compliance department and requested a copy of the SRA's forensic investigation report as a means of attempting to explain the SRA's unfathomable decision to do nothing to halt the Ecohouse fraud – the SRA refused the transparency request citing various illicit reasons, none of which justify why they believed it was not in the public interest to know why the SRA failed to protect legal consumers from loss due to fraud.

TC 2019 157 - Request for SRA's investigatory report against Sanders & Co.

This request was made in order to determine the reason why the SRA had not intervened against Sanders & Co. to halt a fraud, be that :-

- Gross negligence.
- Gross incompetence.
- Deliberate nonfeasance in order to avoid inferring dishonesty (to evade compensation claims).

TC 2019 - Sanders & Co. Forensic Investigation Report (click)

SRA's Refusal of TC 2019 157 (click)

CAR Response To TC 2019 157 Refusal (click)

Internal Review Into TC 2019 Refusal - Refusal Upheld (click)

There are a whole series of information requests that have been denied through SRA concealment.

History of Interventions

SRA interventions are disturbingly declining. In one year alone SRACF payments dropped by 42% amidst a backdrop of increasing misconduct and an insurance indemnity crisis. The SRA appears hell-bent on deregulating and destroying public protection; much like the Tory Government ; frankly, there is little to distinctly differentiate the two from each other.

Compensation Fund Payouts Tumble By 42% In A Year (click)

Compensation Fund Payments Drop By £5.9M In A Year (click)

This is more evidence of the SRA being conflicted. The SRA are so obsessed with conserving compensation funds that they resort to turning a blind eye to significant frauds taking place.

It is scandalous that the SRA was axing the number of interventions when misconduct and large investment frauds were on the increase. The SRA preferred to permit legal service consumers to suffer greater loss, rather than intervene to protect them. The SRA's behaviour is all based on reducing its exposure to SRACF claims and is most certainly not about protecting client funds or acting on the suspicion of dishonesty.

For the above mentioned points concerning intervention, it should be a priority for the SRA to be impelled to fund interventions through the practising certificate fee. It is incongruous that the SRA should choose not to follow up on that entirely sensible suggestion in order to relieve it of one of its many conflicting objectives. This suggestion should be taken with a pinch of salt because, even if the SRA were made to fund interventions through the practising certificates you can guarantee that they would find excuses not to intervene. The SRA would inevitably revert to using cost as a reason not to intervene on account of the organizations inate lack of probity, integrity and morality.

It has come to the point where the SRA simply cannot be trusted to intervene of its own accord. The direction should be coming from a wholly independent body that has legal service consumers best interests at heart. The SRA swears blind that it acts in the best interests of consumers but that has been proven to be a lie on numerous occasions – the SRA has long since deserted legal service consumers.

The SRA is very much aware that borrowing client funds is dishonest, let alone misappropriating £33 Million in client funds. Despite this the SRA and its CEO arrogantly and belligerently refuses to concede Sanders solicitors dishonesty.

Dishonesty

The SRA has refused to concede the dishonesty of solicitors in the Ecohouse case after they misappropriated hundreds of client's funds. In relation to the SRACF claim brought by around 70 fraud victims, the SRA's Techical Officer deceitfully stated in their technical report that Sanders solicitors had merely "Failed to account" for client funds. What the solicitors had done was to renege on providing legal protection to hundreds of clients, choosing instead to launder £33,000,000 of client funds direct to Ecohouse. Even the SRA CEO confirmed that the solicitors simply paid Ecohouse client funds away to Ecohouse after taking their fees.

> Paul Philip Confirms Sanders Handed Client Funds To Ecohouse (click)

The SRA's failure to admit the solicitors dishonesty or indeed make the appropriate allegations was the subject of a substantive complaint against the SRA.

> CAR_CP02 – SRA Fails To Allege Dishonesty (click)

True to form, the SRA refused to address the complaint, which legitimately questioned and scrutinised the SRA's total absence of "Due process" - consequently a transparency request was raised for the SRA's due process. The transparency request was also refused, so a further complaint was raised.

> CAR_CP03 – SRA Fail To Be Accountable For Flawed Dishonesty Decision (click)

That complaint was ignored by the SRA as well.

The SRA needs to adopt a different approach in relation to compensation scheme claims and consider that solicitor clients who suffer loss due to dishonest solicitors are left devastated by their losses and their lives will never be the same again if their losses are not reimbursed.

Response To Consultation Questions

1. Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

No. In the Ecohouse case the solicitors concerned are known to have acted dishonestly because they facilitated and involved themselves in transactions to a fraudulent Ponzi scheme – this is a scheme that has been proven to be a fraud in two substantive hearings in Spring 2019. The SRA has purposely evaded conceding dishonesty in order to evade paying compensation to the victims of the fraud. Unfortunately this renders the scope statement as being unrepresentative of what happens in practice, with the SRA circumventing due process in order to avoid significant claims.

The SRA needs to make it patently clear that it will compensate solicitor clients when they facilitate, aid or abet fraud – this should not depend on the quantum of the fraud – the SRA should be compensating fraud regardless and ensuring that the compensation scheme is adequately funded.

It is appreciated that this might give rise to funding issues, but the reality is that the SRA need to tackle the root cause of the misconduct and solicitors involvement in fraud rather than penalising legal service consumers whilst taking no action whatsoever to bring the misconduct to a halt.

2. Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes. The SRA's imposition of hardship criteria was in fact precluding those that are really in hardship from pursuing a claim due to the onerous rules and prying financial questions.

3. Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

No. The compensation was set up by statute and is not discretionary. The inclusion of the word discretionary opens the fund up to abuse. Without any assurance that the SRA will provide viable protection, the fund is nothing more than a confidence trick which deceives legal consumers into thinking they are protected against unscrupulous solicitors when they are not.

It is not for the SRA to judge whether losses are immaterial to a claimant – if the claimant has gone to the trouble of completing the SRA's onerous forms and jumping through endless pedantic hoops, then clearly the claimant does not regard their outstanding loss as immaterial.

4. Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No. This is an unethical proposal from the SRA. Once again the SRA are perversely and immorally attempting to reduce their exposure to claims instead of protecting consumers and taking greater measures to tackle the root cause for the misconduct.

It is grossly unfair and unreasonable of the SRA to suggest that because a solicitor has not provided their clients with a legal service that they would be denied a grant from the compensation scheme. In the Ecohouse case Sanders solicitors unethically and dishonestly reneged on hundreds of legal agreements in order to aid and abet a fraud. The theft or illicit transfer of a client's funds to an unauthorised party without meeting trigger conditions is the most serious act of treachery that a solicitor can inflict on their client and simply has to be compensated.

If a seller's solicitor was dishonest in a conveyancing transaction it would not be fair to leave the buyer's client without recourse to redress. Neither would it be fair if an opposing divorce lawyer ran off with settlement funds. There has to be redress against these events.

5. Do you think we should expressly include a right for the client of a solicitor whose actions have caused the loss for which they are liable to make a claim on the Fund, if no other redress is available?

Yes of course. It would not be fair or ethical to leave the client to suffer the burden of loss due to the fault or negligence of their solicitor.

6. Do you agree with the proposal to introduce a multiple application cap?

No. It would not be fair to the people who are caught out by these schemes if the SRA introduced a cap that applied to multiple applicants aggregated together. Once again the SRA seeks to penalise legal service users rather than tackling the root cause of the problem – i.e. dishonest solicitors.

There are far better ways to ensure that solicitors don't abuse their client accounts and exceed their professional indemnity cover limit. The SRA should be putting a cap on what a solicitor can submit into their client account and if a solicitor exceeds the permitted limit it should flag up a serious non compliance event. The SRA should be monitoring basic financial metrics on solicitors in order to detect whether their activity is out of the ordinary, e.g. excessive annual turnover or profit.

Sanders was a small "Back water" solicitor firm that couldn't even pay their rental lease on time prior to becoming involved in Ecohouse – then all of a sudden the funds being submitted into their client account amounted to several £Million each year. The SRA should have been capable of detecting such an obvious change of circumstances and investigated. In over 2½ years the SRA detected nothing.

Instead of attempting to lower its exposure to claims, the SRA should be taking robust action to prevent solicitors from giving credibility to fraudulent schemes. The penalties for involvement in fraudulent schemes should be in proportion to the extent of fraud committed. The SRA should, without question, be striking off solicitors who give credibility to fraudulent schemes, but in the Ecohouse case the duplicitous regulator refused to admit the solicitors dishonesty in spite of multitude qualifying criteria, not least, misappropriation, lending credibility to a dubious scheme, assisting others with wrongdoing, misleading a regulator, misleading a tribunal, and of course for committing fraud !

The severity of SRA prosecutions must fit the crime. In the Ecohouse case the SRA initially only suspended the SRA regulated solicitor and Ecohouse director, Charles Fraser Macnamara and awarded him a piffling £10k fine. His daughter was not penalised at all – she worked as a trainee solicitor at Sanders & Co., assisting her father with the fraud – she knew exactly what she was doing.

The prosecutions that the SRA brought were pathetic and set no disincentive for other solicitors not to involve themselves in fraudulent schemes – on the contrary, the SRA's penalties sent out the message to solicitors that they could get rich quick and get off virtually "Scot free" after involving themselves in a fraudulent scheme. It is an extremely remiss and irresponsible for the SRA to set such a poor precedent to the profession.

The pathetic prosecutions resulted from the SRA's deceit and failure to allege dishonesty - a product of the SRA's conflicted position and it's desire to evade paying compensation against large frauds.

In the process of subverting due process the SRA also compromised justice in the case, yet the misguided CEO obtusely refused to revisit justice to bring strike offs and prosecutions for fraud, even after 44 MPs wrote to him expressly requesting the SRA to revisit justice.

The Ecohouse case sets a new benchmark of SRA immorality when dealing with investment fraud.

7. Do you agree that we set a financial threshold of £5m? Please provide any available evidence to support your response.

No. I don't think that a cap is reasonable at all, except of course if it was applicable to a single claimant, in which case, it would perhaps be a reasonable threshold. As mentioned in the response to Q6., rather than using sticky plasters to lessen the impact of misconduct, the SRA needs to tackle the root cause of the misconduct through robust preventative action. The SRA cannot keep penalising consumers and eroding protection every time it proposes policy changes to tackle rife misconduct.

Even a £50 Million cap would be considered too low. Having no cap at all is the situation that should persist in order to drive it home to the SRA that it needs to tackle the root cause for misconduct, instead of penalising victims of misconduct when things go wrong.

8. Do you have a preference for any method of apportionment or that we retain the option to apply any of these depending on the circumstances?

I don't agree with a cap at all, but would argue that in the instance whereby one particular investor has invested in multiple units, then their proportion should be multiplied by the number of units they expected to purchase. The reason for this argument is that their loss is significant compared to those who invested in just 1 unit – the SRA cannot reasonably state that it is their own fault that they suffered a significant loss on account that they invested in multiple units – it doesn't mean they are wealthy – on the contrary, the investment fraud will likely have bankrupted them. In the event that apportionment was used, the compensation grant should be a proportion of what a claimant invested.

9. Do you have any other comments on the features of the proposal to cap multiple claims?

No, not apart from the fact that I do not agree with the aggregation of claims whatsoever, whether by indemnity insurers or by the SRA. Consumers need to be properly protected.

10. Do you agree with the revised approach to how we will apply the single applications limit?

No. I consider the £500k limit is way too low. Towards the end of last year the Law Society Gazette reported that this limit had been abandoned, so it is most concerning that it is back on the SRA's agenda again. This ridiculously low limit is deemed to be a direct attempt by the SRA to lower its exposure to conveyancing fraud, but would leave a large proportion of house purchasers with a significant capital shortfall if they were purchasing a property in central London for instance.

11. Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly EDI impacts that you think we have not identified?

Not apart from those that are mentioned in the Forward section and in my general comments about the proposals and examples relating to the Ecohouse case.

Protecting users of legal services - prioritising payments from the SRA Compensation Fund

Response ID:25 Data

2. About you

9.
How should we publish your response?

Please select an option below.

Publish the response anonymously

3. Consultation questions

1) Do you agree that the proposed purpose statement will help people understand the circumstances when a claim is likely to be paid?

Strongly disagree

10. Please explain your answer and any further suggestions on how to help people understand when a claim is likely to be made.

The purpose statement is aimed at protecting the profession not protecting the public from being exploited, and misled by the profession, the professional is well able to protect itself.

11.
2) Do you agree with our revised proposals to remove hardship tests for all individuals, small businesses, small charities and small trusts?

Yes

12.
3) Do you agree with the proposal that we use our residual discretion to refuse or reduce payments on rare occasions when we consider the loss will be immaterial or substantively compensated elsewhere?

No

13.
Please explain why not

Again this is biased in favour of protecting the profession when the profession are more able than most to protect themselves.

14.
4) Do you agree that the Fund should only be available to those who are the clients, or recipients, or the services of the solicitor/firm in question?

No

15.
Please explain why not

Because the detriment suffered through the misconduct of a solicitor is not felt only by their client, it is also felt possibly even more keenly by un represented individuals who are dealing with misconduct and self representing.

16.
5) Do you think we should expressly include a right for the client of the solicitor whose actions have caused the loss for which they are liable, if no other redress is available?

Yes

17.
Please explain your answer

18.
6) Do you agree with the proposal to introduce a multiple application cap?

No

19.
Please explain why not

The public needs protection and the only way the legal profession can be held to account in a meaningful way is to make it financially ruinous if they do not act in line with the spirt and letter of the principles. At the moment for a member of the public to take on a Solicitor or Barrister who has openly committed fraud is barely possible - they act with equanimity. The public needs to be protected.

20.
7) Do you agree that we set a financial threshold of £5m?

No

21.
Please explain why not

The public needs as much protection as possible, if a solicitors misconduct has cost anyone they hold be entitled to full compensation for that cost.

22.
8) Do you have a preference for any method of apportionment, or that we retain the option to apply any of these depending on the circumstances?

no comment

23.
9) Do you have any other comments on the features of the proposal to cap multiple claims?

I think it is deeply unjust and encourages the misconduct and exploitation of the public by the legal profession which is the reason for the high level of claims against the fund.

24.
10) Do you agree with the revised approach to how we will apply the single applications limit?

No

25. Please explain why not

Again the Balance should always be in favour of the public.

26.
11) Do you have any other comments on the proposals and impacts we have set out in the consultation? Are there any impacts particularly Equality Diversity and Inclusion impacts that you think we have not identified?

I am horrified to note that the highest proportion of solicitors against whom the SRA upholds complaints are from ethnic minorities. This is completely unjustifiable given the small number of ethnic minorities in the profession, and indicates a disgraceful level of prejudice in the regulator. There are plenty of corrupt solicitors who are not from ethnic minorities.